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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No.

THE STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

INDEX

	Original	Print
Record from district court of Dakota County	1	1
Citation	1	1
Answer	3	2
Settled case	6	4
Offers in evidence	6	4
Testimony of George E. Blasius	8	5
Stipulation as to shipments	10	6
Stipulation as to certain facts	12	7
Stipulation settling case	13	8
Order settling case	14	8
Findings of fact and conclusions of law	15	9
Memorandum, Schultz, J.	18	11
Notice of motion for amendment of findings of fact and conclusions of law	19	11
Amended findings of fact and conclusions of law	20	12
Order amending findings of fact and conclusions of law	23	14
Memorandum, Schultz, J.	31	19
Judgment	34	21
Notice of appeal	35	21
Stipulation waiving bond	35	22
Proceedings in supreme court of Minnesota	36	22
Opinion, Loring, J.	36	22
Judgment	42	28
Clerk's certificate (omitted in printing)	43	
Order allowing certiorari		29

[fols. a-1]

IN DISTRICT COURT OF DAKOTA COUNTY, STATE OF MINNESOTA

THE STATE OF MINNESOTA

against

GEORGE BLASIUS, Defendant

CITATION

The State of Minnesota to the defendant above named:

Whereas, the County Auditor of said County did on the 28th day of July, 1930, file with the Clerk of the Court above named a copy of the revised list of personal property taxes delinquent for the year 1929 as provided by law, and it appears from said copy that the sum of Forty-three and 84/100 ($43.84) Dollars, including penalty as provided by law, stands assessed against you as personal property taxes for said year and that the same are delinquent and unpaid.

Now Therefore, you are hereby cited and required to be and appear before the District Court above named on the first day of the next General Term thereof commencing on [fol. 2] the 10th day of November, 1930, at 10 o'clock A. M., at the Court House in the City of Hastings in said County, then and there to show cause, if any there be, why you should not pay said taxes and penalty; and if you fail to pay said taxes and penalty and all accrued costs thereon to the sheriff of said county on or before said time or at said time fail to show sufficient cause for said non-payment of said taxes, penalty and accrued costs, judgment will be entered against you for said amount of said taxes and penalty together with all accrued costs and disbursements.

Witness the Honorable W. A. Schultz, Judge of said Court, and the Seal thereof this 7th day of August, 1930.

T. S. Ryan, Clerk. (Seal.)

[fol. 3] IN DISTRICT COURT OF DAKOTA COUNTY

In the Matter of Enforcement of Personal Property Tax for the Year 1929 as Against GEORGE E. BLASIUS

STATE OF MINNESOTA, Plaintiff,

v.

GEORGE E. BLASIUS, Defendant

ANSWER

Comes now George E. Blasius and for his Answer in the above entitled matter states:

I

That he is a resident of South St. Paul, Dakota County, Minnesota, and is and has been for several years immediately last past engaged in the business of a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota.

That as such trader in livestock he goes upon the market at said place and bids on the livestock which meets the requirements of his trade, and makes his purchases upon said [fol. 4] bid in the face of open competition at said place.

That the class of livestock which the said George E. Blasius buys on said market are those that go immediately thereafter into the hands of feeders or growers within and without the State of Minnesota, and principally beyond the borders of said State, and said answering defendant, during the time that he has been operating upon said market, has never handled or dealt in cattle or other livestock for immediate slaughter.

That the yards of the St. Paul Union Stockyards Company, the place where said answering defendant carries on his operation as such trader, is that place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock that reaches said yards from day to day. That said livestock that so arrives at said yards comes from the State of Minnesota and other states throughout the northwest, and that the livestock which this answering defendant deals in comes from the above mentioned terri-

tory and finds its final resting place in the said feed lots of Illinois, Iowa, Indiana and other southern and eastern states.

That on the 1st day of May, 1929, this answering defendant had in his possession at the said stockyards in South St. Paul 11 head of cattle for which the assessor and [fol. 5] Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651.00), with an assessed valuation of Two Hundred Seventeen Dollars ($217.00). That all of the said cattle which said answering defendant then had in his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and all of said cattle at said time and place were handled by this answering defendant in commerce between states. That is to say, that all of said cattle were such as were being transported from the west to the east and south and were being handled by said answering defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the handling of said cattle by said answering defendant is a necessary factor in the center of this chain of commerce from the west to the east and south, and that because of the fact that said livestock was a part of said commerce the same are not subject to taxation by the authorities of the State of Minnesota.

II

III

IV

[fol. 6] Wherefore this answering defendant asks this Court for judgment ordering and directing that all property listed for taxation upon said tax list be stricken therefrom and the tax placed thereon be reduced accordingly, * * * and for such other and further relief as to this Court may seem just and equitable.

D. L. Grannis, Attorney for Defendant, F. J. Schult Building, So. St. Paul, Minnesota.

(Acknowledged.)

IN DISTRICT COURT OF DAKOTA COUNTY

Settled Case

The above entitled matter came on for hearing before Hon. W. A. Schultz, Judge, without a jury, on the 27th day of January, 1931; and Harold E. Stassen, Esquire, appeared as attorney for the State of Minnesota; and D. L. Grannis, Esquire, appeared as attorney for George E. Blasius.

State's Exhibits A and B marked for purpose of identification.

OFFERS IN EVIDENCE

By Mr. Strassen: Offer in evidence State's Exhibit A, being delinquent tax list, in so far as it pertains to the delinquent personal property tax matter of George E. Blasius.
[fol. 7] The Court: Received.

By Mr. Stassen: Offer in evidence Plaintiff's Exhibit A, being the citation of the Clerk of Court to defendant, George E. Blasius.

By Mr. Grannis: No objection.

The Court: Received.

State's Exhibit C marked for the purpose of identification.

By Mr. Grannis: No objection to its admission.

Mr. Stassen: Offer in evidence State's Exhibit C, being assessor's detailed listing of property of George E. Blasius, and it is understood that upon this Exhibit C the judgment was entered, subject to the revision of the local board of review and county board.

By Mr. Grannis: Yes; but it was not revised.

By Mr. Stassen: Mr. Blasius was cut down some—these are filed as the assessor turned them in I understand.

By Mr. Grannis: There is the cut—have you any objection to putting this in?

By Mr. Stassen: That is all right—we will substitute that then—there is no use in having two identical copies.

By Mr. Grannis: They are identical.

Mr. Stassen: Yes; that is the identical copy.

State's Exhibit D marked for the purpose of identification.

[fol. 8] The Court: State's Exhibit C may be received in evidence.

Mr. Grannis: Then we will put that in, and that is a copy of the cut.

Mr. Stassen: This is received as indicating the cut made by the County Board.

By Mr. Grannis: I would rather consent to having you put that in as your first exhibit.

Mr. Stassen: The State rests.

Defendant's Exhibit 1 marked for the purpose of identification.

The Court: Received.

GEORGE E. BLASIUS, being duly sworn as a witness on his own behalf, testified on direct examination as follows:

Examined by Mr. Grannis:

Q. What is your name?
A. George E. Blasius.
Q. Where do you reside?
A. South St. Paul, Dakota County, Minnesota.
Q. For how long have you resided in South St. Paul?
A. About sixteen years.
Q. What is your business?
A. Cattle business.
Q. And when you say that you are in the cattle business explain what kind of cattle business you are in?
[fol. 9] A. We are dealers in the cattle business—dealers in cattle, we buy and sell on commission and on order.

* * * * * * *

Q. Now, there is also assessed against you at that same time ten head of cattle—did you own those cattle at that time?
A. Yes.
Q. That is on May 1, 1929?
A. Yes. I bought them the night before.
Q. What was their reasonable market value?

(Pause.)

By Mr. Grannis: I withdraw that.

Q. Do you make any objection to the value of cattle, as fixed by the assessor on the assessor's list?

A. No.

Q. So there is no question as to the value of the cattle?

A. No.

. . . . . .

[fol. 10] Q. Now, tell the Court just how you operate in your cattle dealings there, will you please, how you buy and sell?

A. We buy from commission firms and take them to our own pens allotted by the Stockyards Company, and sell for a profit to anybody who comes near. Most of our cattle are sold to be shipped out of the State, to Illinois and Iowa.

STIPULATIONS AS TO SHIPMENTS

By Mr. Grannis: If the Court please, on that point, we are very anxious, both the State and the Live Stock Exchange, to have this question presented formally to the Court, and that is, that these cattle which Mr. Blasius had on May 1 were cattle that were purchased from without the State and consigned to the South St. Paul market, and

It Is Stipulated and Agreed, that these cattle which George E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, or they were purchased from points within the state, [fol. 11] consigned to the market at South St. Paul, and purchased as he testified to, and shipped to points without the state.

The Court: They were never purchased within the state and shipped to points within the state. If they were purchased inside the state they were shipped outside the state.

By Mr. Stassen: I will stipulate and agree to that with this provision: It is understood that Mr. Blasius purchased these cattle at the South St. Paul market after the original shipment. Mr. Blasius, in other words, did not go out into the state and make the purchase.

Mr. Grannis: We will stipulate to that.

Mr. Stassen: Isn't the true situation that these cattle were not purchased before they were shipped?

Mr. Grannis: When I refer to the word "purchase" as cattle being purchased outside the state I do not mean to say that Mr. Blasius purchased the cattle outside the state or that Mr. Blasius purchased the cattle in the state outside the stockyards. I refer to the word "purchase" as they were purchased by some person dealing in cattle and shipping to the stockyards, and when the cattle arrived at the stockyards they were offered for sale on the market at that place, and Blasius made the purchase.

* * * * * * *

[fol. 12] STIPULATION AS TO CERTAIN FACTS

In addition to the stipulation heretofore entered into between the parties hereto,

It is further stipulated and agreed that the defendant, George E. Blasius, at the time of the commencement of this action, was a resident of South St. Paul, Dakota County, Minnesota, and had been for several years previous thereto, and was engaged in the business of a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota; that as such trader in livestock it was his business practice to go upon the market at said place and bid upon and buy the livestock to meet the requirements of his trade, and he made said purchases in the face of open competition at said market.

That the yards of the St. Paul Union Stockyards Company, where defendant carried on his said operations as such trader, is a place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock that reaches said yards from day to day.

[fol. 13] That at the opening of business on the 1st day of May, 1929, the eleven head of cattle in question were owned by the said George E. Blasius and had not been entered with any carrier for shipment to any point, but were being offered for sale on said market, and on said 1st day of May seven of said eleven head of cattle were sold and immediately shipped by the purchaser to points out of the State of Minnesota; that the other four head of cattle were

not sold by George E. Blasius until the following day when they were likewise shipped by the purchaser.

That the reasonable market value of said seven head of cattle was $60.00 apiece.

It is further stipulated and agreed that this stipulation may become a part of the record in this action with the same force and effect as if made at the date of the trial.

Dated this 15th day January, 1932.

(Signed) H. E. Stassen, Attorney for County of Dakota. (Signed) D. L. Grannis, Attorney for Defendant.

IN DISTRICT COURT OF DAKOTA COUNTY

STIPULATION SETTLING CASE

It is hereby stipulated and agreed, by and between the parties to the above entitled action, that the foregoing proposed [fol. 14] case, consisting of the typewritten transcript of the evidence may be taken as conformable to the truth and as containing all of the evidence offered and introduced on the trial of said cause, except the exhibits, and all objections, rulings and other proceedings of said trial, and that the same may be settled and allowed as a settled case herein by the Hon. W. A. Schultz, the Judge who tried said case.

Dated at Hastings, Minnesota, this 20th day of January, 1932.

H. E. Stassen, Attorney for Plaintiff. D. L. Grannis, Attorney for Defendant.

IN DISTRICT COURT OF DAKOTA COUNTY

ORDER SETTLING CASE

I hereby certify that the foregoing action, consisting of the typewritten transcript, has been examined by me and found conformable to the truth, and to contain all the evidence offered or introduced on the trial of this action, except the exhibits, and all objections, rulings and all other proceedings of such trial, and I hereby settle and allow the [fol. 15] same as a settled case herein.

Dated at Hastings, Minnesota, this 20th day of January, 1932.

W. A. Schultz, Judge of said District Court.

IN DISTRICT COURT OF DAKOTA COUNTY

Findings of Fact and Conclusions of Law

The above entitled matter came on for trial before this Court, and Harold Stassen, Esquire, appeared as attorney for the State of Minnesota and D. L. Grannis, Esquire, appeared as attorney for George E. Blasius: and evidence having been adduced and the matter having been duly argued and submitted, and the Court having considered the same, on this 20th day of April, 1931,

FINDS AS FACTS

That the first, second and third paragraphs of paragraph I of the answer have, in all things, been proved.

That the fourth paragraph of paragraph I of said answer, ending with the word "'day" on page 2, third line, has, in all things, been proved.

That said parts of said answer are hereby made a part of these Findings.

[fol. 16] That it was stipulated and agreed by and between counsel for both parties at the trial as follows:

"It Is Stipulated and Agreed, that these cattle which George E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, or they were purchased from points within the state, consigned to the market at South St. Paul, and purchased as he testified to, and shipped to points without the state."

and which stipulation the Court finds are the facts, and makes them a part of the findings.

That the regular course of business of the above named defendant was that practically all cattle purchased by said defendant were sold and shipped to non-residents of the state, and it was unusual to sell and to ship to residents of the state, although selling and shipping to residents did sometimes occur.

That on the 1st day of May, 1929, defendant had in his possession at South St. Paul eleven head of cattle for

which the assessor and Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651), with an assessed valuation of Two Hundred Seventeen Dollars ($217). That all of the said cattle which said answering defendant then had in [fol. 17] his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and were such as were usually transported from the West to the East and South, and were being handled by said answering defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the handling of said cattle by said answering defendant is a necessary factor in the center of chain of commerce from the west to the East and South.

. . . . . .

The Court further finds, that the rate at which said property was taxed for the year 1929 was .09270.

That the total assessment against said defendant is, and should be fifteen and 85/100 Dollars ($1.85).

The Court Further Finds, that the true and full value of said property is also the reasonable market value thereof.

CONCLUSIONS OF LAW

That the cattle referred to in paragraph I of said Answer are cattle that were in inter-state commerce on May 1, 1929, and the above named defendant at said time was also engaged in interstate commerce, and said cattle are [fol. 18] not taxable.

. . . . . .

That the plaintiff is entitled to judgment against said defendant for said sum of Fifteen and 85/100 Dollars ($15.85), without costs or disbursements.

Let judgment be entered accordingly.

W. A. Schultz, District Judge.

IN DISTRICT COURT OF DAKOTA COUNTY

MEMORANDUM

As to the question of Interstate Commerce:

Coe v. Erroll, 166 U. S. 517, 29 L. Ed. 715.
Swift & Co. v. U. S., 196 U. S. 375, 45 L. Ed. 518.
Stafford v. Wallace, 66 L. Ed. 735.
Lemke v. Farmers Grain Co., 66 L. Ed. 458.
Carson Petroleum Co. v. Vial, 73 L. Ed. 626, 279 U. S. 95.
State v. Hughes Brothers, 163 Minn. 436, 71 L. Ed. 359.

The case of Myers v. Baltimore Co., 83 Md. 385, 35 Atl. 144, cannot be reconciled with the above cases and probably will no longer be followed by the United States Courts.

* * * * * * *

Schultz, J.

[fol. 19] IN DISTRICT COURT OF DAKOTA COUNTY

NOTICE OF MOTION FOR AMENDMENT OF FINDINGS AND CONCLUSIONS

To D. L. Grannis, Esq., attorney for defendant:

You will please take notice that at a special term of the above named court to be held in the court house at the City of Hastings in said County and State, on Saturday, the 20th day of June, 1931, at 10:00 o'clock in the forenoon, the above named plaintiff will, at the opening of the court on that date or as soon thereafter as counsel can be heard, move the court for an amendment of the Findings of Fact in the above entitled matter, pursuant to the amended Findings of Fact hereto attached and made a part hereof. If said motion is granted, the plaintiff will then move the court for an amendment of the Conclusions of Law pursuant to the Amended Conclusions of Law hereto attached and made a part hereof.

The plaintiff will then move the court that judgment be entered in accordance with said amended Findings of Fact and Conclusions of Law.

Respectfully yours, Harold E. Stassen, 115 Grand Avenue, So. St. Paul, Minnesota.

[fol. 20] In District Court of Dakota County

Amended Findings of Fact

The above entitled matter came on for trial before this Court, and Harold Stassen, Esquire, appeared as attorney for the State of Minnesota, and D. L. Grannis, Esquire, appeared as attorney for George E. Blasiu and evidence having been adduced and the matter hav.. been duly argued and submitted, and the Court having considered the same, on this 20th day of April, 1931,

Finds as Facts

That the first, second and third paragraphs of paragraph I of the answer have, in all things, been proved.

That the fourth paragraph of paragraph I of said answer, ending with the word "day" on page 2, third line, has, in all things, been proved.

That said parts of said answer are hereby made a part of these Findings.

That it was stipulated and agreed by and between counsel for both parties at the trial as follows:

"It is stipulated and agreed that these cattle which George E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul Market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, [fol. 21] or they were purchased from points within the state, consigned to the market at South St. Paul, and purchased, as he testified to, and shipped to points without the state,"

and which stipulation the Court finds are the facts, and makes them a part of these Findings.

That the regular course of business of the above named defendant was that practically all cattle purchased by said defendant were sold and shipped to non-residents of the state, and it was unusual to sell and to ship to residents of the state, although selling and shipping to residents did sometimes occur.

That on the 1st day of May, 1929, defendant had in his possession at South St. Paul eleven head of cattle for which the assessor and Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651.00), with an assessed valuation of Two Hundred Seventeen Dollars ($217.00). That all of the said cattle which said answering defendant then had in his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and were such as were usually transported from the West to the East and South, and were being handled by said answering defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the [fol. 22] handling of said cattle by said answering defendant is a necessary factor in the center of chain of commerce from the West to East and South.

That the answering defendant purchased said eleven cattle on the South Saint Paul Market after the original portion of their journey from their source to said market had been completed; that on the first of May, 1929, the answering defendant was the sole owner of said eleven (11) cattle and the sale and shipment by him did not occur until after the first of May, 1929; that on the first of May, 1929, said cattle had not been entered with any carrier for shipment to any point and their final destination was not fixed.

* * * * * * *

The Court further finds that the rate at which said property was taxed for the year 1929 was .09270.

That the total assessment against defendant on the above three items is and should be $15.85.

The Court further finds that the true and full value of the eleven cattle herein, being the article referred to in Line 12 of State's Exhibit C is $651.00, one-third full and true value $217.00, that applying the rate at which said property was taxed to the assessed valuation, the tax would be $20.12.

The Court further finds that the true and full value of [fol. 23] of said property is also the reasonable market value thereof.

(Title of Cause)

AMENDED CONCLUSIONS OF LAW

That the cattle referred to in paragraph one (1) of said answer are taxable by the State of Minnesota as of May 1, 1929.

* * * * * * *

That the plaintiff is entitled to judgment against said defendant for the said sum of $35.97 without costs or disbursements.

Let judgment be entered accordingly.

——, District Judge.

IN DISTRICT COURT OF DAKOTA COUNTY

ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter came on for hearing before this Court on a notice of motion on part of the plaintiff for an amendment of findings of fact and conclusions of law in the above entitled action; and H. E. Stassen, Esquire, appeared as attorney for the plaintiff, and D. L. Grannis, [fol. 24] Esquire, appeared as attorney for the defendant; and a further stipulation having been entered into dated January 15, 1932, and which it was agreed might become a part of the record in said action with the same force and effect as if made at the time of trial; and the matter having been submitted, and the Court having duly considered the same, on this 22nd day of January, 1932, it is

Ordered that said motion be, and hereby is, in all things, granted, except as to the last five lines of the second to the last paragraph of page 2 of the proposed amended findings beginning with the words "and the sale" and ending with the word "fixed", and the findings of fact and conclusions of law fur-

ther amended so that said findings of fact and conclusions of law be, and hereby are, amended to read as follows:

Amended Findings of Fact

I

That the first, second, third and fourth paragraphs of the Answer have, in all things, been proved, and are hereby made a part of these findings.

II

That is was stipulated and agreed by and between counsel for both parties at the trial as follows:

"It is stipulated and agreed that these cattle which George [fol. 25] E. Blasius owned on May 1, 1929, were cattle that were purchased from without the state and consigned to the South St. Paul market for sale, purchased by Mr. Blasius and sold to parties who immediately shipped them either to points within the state or points without the state, or they were purchased from points within the state, consigned to the market at South St. Paul, and purchased as he testified to, and shipped to points without the state,"

and which stipulation the Court finds are the facts, and makes them a part of these findings.

III

It was further stipulated that the following stipulation become a part of the record in this action with the same force and effect as if made at the date of the trial, which stipulation is hereby referred to, and the Court finds that the matters therein contained are true, and makes them a part of these findings, to-wit:

"It is further stipulated and agreed that the defendant, George E. Blasius, at the time of the commencement of this action, was a resident of South St. Paul, Dakota County, Minnesota, and had been for several years previous thereto, and was engaged in the business of a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota; that as such trader in livestock it was his business practice to go upon the market at said place and bid upon and buy the livestock to meet the requirements of his trade,

and he made said purchases in the face of open competition at said market.

"That the yards of the St. Paul Union Stockyards Company, where defendant carried on his said operations as such trader, is a place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock [fol. 26] that reaches said yards from day to day.

"That at the opening of business on the 1st day of May, 1929, the eleven head of cattle in question were owned by the said George E. Blasius and had not been entered with any carrier for shipment to any point, but were being offered for sale on said market, and on said 1st day of May seven of said eleven head of cattle were sold and immediately shipped by the purchaser to points out of the State of Minnesota; that the other four head of cattle were not sold by George E. Blasius until the following day when they were likewise shipped by the purchaser.

"That the reasonable market value of said head of cattle was $60.00 apiece."

IV

That the regular course of business of the above named defendant was that practically all cattle purchased by said defendant were sold and shipped to non-residents of the state, and it was unusual to sell and to ship to residents of the state, although selling and shipping to residents did sometimes occur.

V

The Court further finds that the defendant bought the eleven head of cattle from commission firms to whom said cattle were consigned for sale by persons who purchased said cattle; that the commission firms at the time of sale to defendant were not owners of the cattle, but had them for sale, as aforesaid, and were to remit the net proceeds of sale to their consignors; that the cattle came to the yards consigned to the commission firms for sale at the South [fol. 27] St. Paul market from some point outside the state; that said shippers or consignors had no intent to transport said cattle to any other place than South St. Paul, nor did they have any intent that such cattle should be transported to any particular place after their sale to said defendant.

VI

That the said defendant is known as a "trader"; that a "trader" is essential to the sales to farmers and feeders, and in this particular case, as in most cases, the sale by the "trader" was made locally to a non-resident, and the cattle were immediately shipped by the non-resident purchaser to points outside the State of Minnesota.

VII

That the said eleven head of cattle, after their purchase from the commission men by the said defendant, were placed in pens leased by the defendant from the Stockyards Company, and after their said purchase by him and up to the time of the re-sale by him, were his own individual property, and that they were at absolute and complete rest in the yards at South St. Paul at which place defendant paid for their feed and water up to the time of re-sale by him, and said cattle from the time they were purchased by him and up to the time of re-sale by him were a part of the [fol. 28] general mass of cattle in the State and locally owned.

VIII

That neither defendant nor his said eleven head of cattle were subject to any discrimination in favor of cattle solely the product of the State of Minnesota; that said eleven head of cattle were assessed as a part of the general mass of property in the State at the regular period of assessment for such property, and in the usual manner; that the transportation of said eleven head of cattle ceased after they were purchased from the commission men and up to and until they were again resold for shipment outside the state; that said cattle were so held in the yards for sale the same as any other local owner of cattle might hold the cattle for sale; that said cattle were held at the pleasure of defendant to be sold to the highest bidder, and if a bid was not acceptable or high enough for him said cattle were held until such time as defendant wanted to sell them, and at no time was defendant compelled to sell to any particular bidder.

That said cattle were not taxed because they came from another state, but were taxed only after they were at rest

in the state, at their then place of destination, locally owned and controlled, a part of the general mass of property within the State, and a commodity in the open market at South St. Paul; that said cattle were assessed at the [fol. 29] same fair and reasonable rate, and in the same fair and reasonable manner as other property in the State of Minnesota, and that said assessment did not in any way attempt to hinder or regulate interstate commerce, and did not discriminate between the products of the different states.

IX

That said eleven head of cattle were consigned to the commission men for the purpose of sale in the yards at South St. Paul, with no thought in the mind of the consignor as to where cattle might finally go from South St. Paul, and at the time they were taxed they were not in the hands of the original shipper, but were locally owned and controlled by the defendant; that while said defendant was the sole owner and controller of said cattle they were not held for the purpose of promoting their safe or convenient transit, but were held and purchased by the defendant because he desired to make a profit for himself at their re-sale; that defendant would sell to any one, resident or non-resident, provided he was the highest bidder; that he did not buy said cattle for the purpose of export or shipment to another State, but solely for his own profit, and at no time were said cattle held by him with the intent or purpose of shipping them to another state, but solely with the intent and purpose of making a profit for [fol. 30] himself in the handling of said cattle.

X

That on the 1st day of May, 1929, defendant had in his possession at South St. Paul eleven head of cattle for which the assessor and Board of Review of South St. Paul, Minnesota, placed a valuation thereon of Six Hundred Fifty-one Dollars ($651.00), with an assessed valuation of Two Hundred Seventeen Dollars ($217.00). That all of the said cattle which said defendant then had in his possession at said time and place were cattle that were being handled at said stockyards in the manner aforesaid, and were such as were usually transported from the West to the East

and South, and were being handled by said defendant as a part of the chain of title from the original producer thereof to the final consumer thereof, and the handling of said cattle by said defendant is a necessary factor in the center of chain of commerce from West to the East and South.

That the defendant purchased said eleven cattle on the South St. Paul Market after the original portion of their journey from their source to said market had been completed; that on the first of May, 1929, the defendant was the sole owner of said eleven cattle.

* * * * * * *

[fol. 31] The Court further finds that the true and full value of the eleven cattle herein, being the article referred to in Line 12 of State's Exhibit C, is $651.00, one-third full and true value $217.00, that applying the rate at which said property was taxed to the assessed valuation, the tax would be $20.12.

The Court further finds that the true and full value of said property is also the reasonable market value thereof.

Amended Conclusions of Law

1. That the cattle referred to in paragraph one (1) of said answer are taxable by the State of Minnesota as of May 1, 1929.

* * * * * * *

3. That the plaintiff is entitled to judgment against said defendant for the said sum of Thirty-five and 97/100 Dollars ($35.97), without costs or disbursements.

Let judgment be entered accordingly.

W. A. Schultz, District Judge.

In District Court of Dakota County

Memorandum

Personal property taxes are assessed against the person and not against the property.

Dunnell's Digest, Sec. 9263.

[fol. 32] The taxes in question do not in any way affect, or any manner restrain interstate commerce, but if it is affected, it can only be affected in a very indirect and remote manner, and not in such a way as to be confiscatory or unduly burdening to such commerce.

Anderson v. U. S., 43 L. Ed. 300.
Hopkins v. U. S., 43 L. Ed. 290.
Brow v. Houston, 29 L. Ed. 257.
Woodruff v. Parkham, 19 L. Ed. 382.
Public Utilities Comm. v. Landon, 63 L. Ed. 577.

In the words of Chief Justice Taft, in the case of Stafford v. Wallace, 66 L. Ed. page 745:

"Some of them are tax cases. As to them it is well to bear in mind the words of the Court in the Swift case (p. 400):

'But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress where such interference is deemed necessary for the protection of commerce among the states.'

"Thus take the case of Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615, 33 Sup. Ct. Rep. 299. * * * it was held that property in a state which its owner intends to transport to some other state, but which is not in actual transit, and in respect to the disposition of which he may change his mind, is not in interstate commerce just because of the intention of its owner, and may, therefore, be taxed by the state where it is. The court brought out the distinction between such cases and this in the remark (p. 516):

'The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power, in view of its nature and operation must be deemed to be in conflict with this paramount authority.' "

Swift & Company v. U. S., 196 U. S. 375, 49 L. Ed. 518.
[fol. 33] Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615.
Note 2 L. R. A. (N. S.) 662, Tax.
Note 55 L. R. A. (N. S.) 903, Tax.
Note 25 A. L. R. 1201.

American Steel and Wire Company v. Speed, 48 L. Ed. 538.
Pittsburgh & Southern Coal Co. v. J. W. Bates, 39 L. Ed. 538, Tax.
Anderson v. U. S., 43 L. Ed. 300.
Carson Petroleum Company v. L. C. Vial, 73 L. Ed. 626, Tax.

* * * * * * *

Schultz, J.

[fol. 34] IN DISTRICT COURT OF DAKOTA COUNTY

JUDGMENT

The above entitled matter came on before this Court, Harold Stassen, Esq., County Attorney, appearing for the Plaintiff, and D. L. Grannis, Esq., South St. Paul, Minnesota, appearing for the Defendant, and the Court having duly made and filed its Findings of Fact and Conclusions of Law, herein.

Now Therefore, Pursuant to said Order, and on Motion of Harold Stassen, Esq., County Attorney, as attorney for the Plaintiff,

It Is Hereby Ordered, Adjudged and Decreed, That the Plaintiff have judgment against the Defendant George E. Blasius, for the sum of Thirty-five and 97/100 ($35.97) Dollars, without costs or disbursements.

Dated January 29th, 1932.

By the Court.

T. S. Ryan, Clerk of Said Court.

[fol. 35] IN DISTRICT COURT OF DAKOTA COUNTY

NOTICE OF APPEAL

To Harold E. Stassen, attorney for the above-named plaintiff, and to T. S. Ryan, clerk of said District Court:

Please Take Notice, That the above named George E. Blasius appeals to the Supreme Court of the State of Minnesota, from the Judgment of the said District Court en-

tered herein on the 29th day of January, A. D. 1932, and from the whole thereof.

Dated First day of March, A. D. 1932.

D. L. Grannis, Attorney for Defendant.

In District Court of Dakota County

Stipulation Waiving Bond

It Is Hereby Stipulated and Agreed, By and between H. E. Stassen, representing the State of Minnesota, and D. L. Grannis, representing George E. Blasius,

That the statutory bond necessary in a case of appeal to the Supreme Court may be, and is, hereby waived, and the said appeal shall have the same force and effect as if the statutory bond had been filed with the Clerk of said Court.

H. E. Stassen, Attorney for Plaintiff. D. L. Grannis, Attorney for Defendant.

[fol. 36] [File endorsement omitted]

In Supreme Court of Minnesota

No. 240. 29017

State of Minnesota, Respondent,

vs.

George Blasius, Appellant

Dakota County, Loring, J.

Syllabus

1. Cattle temporarily owned by licensed dealers at the South St. Paul Stockyards as such cattle arrive and are purchased by such dealers for resale to purchasers outside the state to whom they are immediately shipped, are not subject to state taxation when such transactions are constantly recurrent. The transactions and the temporary

holding of title cannot be separated from the continuity of the flow of commerce through the yards and take on the character of that commerce which is interstate and exempt from the burden of state taxation.

2. A membership in the South St. Paul Traders' Livestock Exchange is property and subject to taxation.

Modified.

OPINION—Filed Dec. 9, 1932

LORING, J.:

This is an appeal from a judgment for personal property taxes levied upon eleven head of cattle at the South St. Paul stockyards and upon a membership in the Traders' Livestock Exchange operating at those yards. The defendant is a trader registered under the federal packers and stock yards act dealing in the buying and selling of cattle at the South St. Paul yards. The cattle in question came to the yards and were there present and owned by defendant on the first day of May, 1929. Part of them were sold on that day and part on the following day and were immediately shipped to their purchasers at points outside the state. The defendant contends that these cattle [fol. 37] when in the yards on May first, were in the flow or current of interstate commerce and that consequently a personal property tax levied on them as of the first day of May is a burden upon interstate commerce and that the state taxing power must yield to the paramount interests of that commerce. He also contends that the membership in the Exchange is not taxable property.

The first branch of the case dealing with the taxability, of the cattle presents the more difficult problem and one not free from doubt. The crucial question to be settled in determining whether personal property moving in interstate commerce is subject to local taxation is that of its continuity of transit. Carson Petroleum Co. v. Vial, 279 U. S. 95, 73 L. Ed. 626. The rule is a simple one but in the light of the decisions, a very difficult one to apply. As here presented it becomes a question whether or not the business done in the stockyards between the receipt of the livestock and its shipment therefrom is a part of inter-

state commerce and the property involved exempt from the burden of local taxation. In matters of this character involving the powers of Congress under the commerce clause we are of course controlled by the views of the Supreme Court as expressed upon issues presented to it. If we were to be guided by that court's expressions in such cases as Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615 and American Steel & Wire Co. v. Speed, 192 U. S. 500, 48 L. Ed. 538, and General Oil Co. v. Crain, 209 U. S. 211, 52 L. Ed. 754, we would have no hesitation in holding that the cattle in transit through the South St. Paul yards, there unloaded and fed and bought and sold by dealers had sufficiently come to rest to be subject to local taxation. In the light of those cases we should say that the interstate journey of these cattle was as much interrupted by the course of business at the stockyards as was the grain in Bacon v. Illinois, the merchandise in the American Steel & Wire case, or the petroleum products in the Crain case.

In Bacon v. Ilinois, supra, the grain had been purchased in the south and had been shipped by way of Chicago to eastern points with the right to remove it from the cars at Chicago to the private grain elevator belonging to the [fol. 38] owner of the grain. There it was inspected, weighed, cleaned, clipped, dried, sacked, graded, or mixed, and grain delivered to the carriers for destinations in other states. The question there presented was whether the removal of the grain to the private elevator interrupted the continuity of the transportation and made the grain subject to local taxation. It was held that it did, and that the grain was locally dealt with in the interest of the owner while it was in his custody and was subject to his complete dispostion for a collateral business purpose of his own.

In the American Steel and Wire Company case, the merchandise was shipped from points outside the state to Memphis, there placed in a warehouse and again sorted and allocated to destinations outside the state of Tennessee. It was held that the continuity of the journey was sufficiently interrupted to subject the merchandise to local taxation. In the Crain case oil was shipped from outside the state to Memphis where it was placed in tanks of various sizes from which the oil was put in barrels or other small containers to be sold locally or in other states or to fill orders already received from customers without the state. It had certain tanks in

which the oil which had been already sold to customers in Arkansas, Louisiana and Mississippi was placed and so marked. It was held that the separating of the oil into various and different containers was itself a local business in Memphis and that its subsequent shipment made a separate interstate shipment, thus interrupting the interstate journey and permitting local taxation.

The Crain case was by a divided court with a very vigorous dissent. The comment made upon that case by the same court in the case of Carson Petroleum Company v. Vial, 279 U. S. 95, 105, indicates that the case while not specifically over-ruled, is not considered to be of controlling weight at present. In fact, as stated in the Carson Petroleum Company case there has been a liberal construction of what is continuity of the journey, in cases where the court finds from the circumstances that export trade has been actually intended and carried through. There seems to us to be a dis- [fol. 39] tinct trend in the decisions of the Supreme Court toward a more liberal construction of what constitutes interstate commerce and toward the exemption from local taxation of property in the current of that commerce. In the case of Swift and Company v. The United States, 196 U. S. 375, the court said:

"Commerce among the states is not a technical legal conception but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state with the expectation that they will end their transit after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

This case was followed by Stafford v. Wallace, 258 U. S. 495, 517, in which the court had under consideration the validity of the packers and stockyards act regulating traffic through stockyards. The court said:

"The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flow-

ing traffic that presses behind. The stockyards are but a throat through which the current flows and the transactions which occur therein are only incident to this current from the West to the East and from one state to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true but they do not stop the flow; they merely change the private interest in the subject of the current, not interfering with, but on the contrary, being indispensable to, its continuity. The origin of the livestock is in the West. Its ultimate destination, known to, and intended by all engaged in the business is in the middle West and the East either as meat products or stock for feeding and fattening. This is the definite and well understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

See also the case of Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 S. Ct. 101, 66 L. ed. 227, where the state of West Virginia sought to impose a tax of two cents a barrel on oil piped from the state to outside points through storage tanks from which the owner might divert it if desired to points within the state. The court held that the oil actually carried out of the state was exempt from the tax as being in interstate commerce while in the tanks and pipes. [fol. 40] It is quite true that the interstate commerce clause of the constitution does not give immunity to movable property from local taxation which is not discriminative unless it is in actual continuous transit in interstate commerce. Chaplain Realty Co. v. Brattleborro, 260 U. S. 366, 67 L. ed. 165, 25 A. L. R. 1195. But quite clearly the Supreme Court regards the passage through the stockyards and the transfer and temporary holding of title therein by the registered dealers as an essential part of the continuity of the transit of the cattle in interstate commerce from west to east That court does not seem to consider as important the fact that a part of the property

flowing in interstate commerce may be diverted from that commerce to intra-state destinations. In the case of United Fuel Gas Company v. Hallanan, 257 U. S. 277, 66 L. ed. 234, natural gas was piped from West Virginia points to points outside the state, but might be diverted at storage points to places within the state according to the desire of the owner of the gas. The court said:

"In short, the great body of the gas starts for points outside the state and goes to them. That the necessities of business require a much smaller amount destined to points within the state to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff, as owner of the gas, and the purchasers, after they receive it, might change their minds before the gas leaves the state; and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the states and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow, ending, as contemplated from the beginning, beyond the state line."

Citing cases. See also Eureka Pipeline Company v. Hallanan, 257 U. S. 265, 66 L. ed. 227, where the court said:

"As has been repeated many times, interstate commerce is a practical conception, and, as remarked by the court of first instance, a tax, to be valid, 'must not, in its practical effect and operation, burden interstate commerce.' It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived."

[fol. 41] In the light of the views expressed by the Supreme Court in Stafford v. Wallace, and in the Swift and Company case, it is our opinion that the learned trial court erred in holding that these cattle had sufficiently come to

rest to subject them to the taxing power of this state and in so far as the judgment relates to the taxes upon the cattle it is reversed.

2. The second question is whether or not the membership in the Traders' Livestock Exchange is personal property and taxable. Though the membership in the Traders' exchange is not so valuable and does not confer so many privileges as did the membership of the Duluth Board of Trade involved in the case of State v. S. A. McPhail, 124 Minn. 398, 145 N. W. 108, we regard that case as controlling on the question here presented. The membership in the Traders' Exchange is a valuable piece of property. It confers a certain standing upon the member and in a measure affects his trading and dealing with livestock in the yard. It passes by purchase and it has a well understood value in the market. On this branch of the case we affirm the judgment of the trial court.

Judgment modified.

Loring, J.

[fol. 42] IN SUPREME COURT OF MINNESOTA

29017

STATE OF MINNESOTA, Respondent,

vs.

GEORGE E. BLASIUS, Appellant

JUDGMENT—Filed Jan. 3, 1933

Pursuant to an order of Court heretofore duly made and entered in this cause, it is determined and adjudged that the judgment of the Court below herein appealed from, to-wit, of the District Court within and for the County of Dakota, be, and the same hereby is, in all things modified in accordance with opinion filed.

Dated and signed Jan. 3, 1933.

By the Court.

Attest: Grace Kaercher Davis, Clerk.

[File endorsement omitted.]

[fol. 43] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed April 17, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUBJECT INDEX.

	Page
Petition for Writ of Certiorari:	
Summary statement of matter involved	1
Reasons relied on for the allowance of the writ	3
Prayer for writ	4
Brief in Support of Petition for Writ of Certiorari:	
I. The opinion of the court below	7
II. Jurisdiction	7
III. Statement of the case	9
IV. Specifications of error	10
V. Argument:	
Summary of Argument	11
Point A—The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota	11
Point B—The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the State's power over commerce among the States	18
Point C—Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce	20
Conclusion	22

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American Steel & Wire Co. v. Speed (1903), 192 U. S. 500, 24 Sup. Ct. 365, 48 L. Ed. 538 12

Bacon v. Illinois (1913), 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615 ..... 13, 17, 18, 20

Brown v. Houston (1885), 114 U. S. 622, 29 L. Ed. 257 12

Carson Petroleum Co. v. Vial (1921), 279 U. S. 95, 49 Sup. Ct. 292, 73 L. Ed. 626 14

General Oil Co. v. Crain (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755 ..... 4, 14, 17, 20

Page

Gulf Refining Co. v. Phillips (1926), 11 F. (2nd) 967 14
Hughes Bros. Timber Co. v. Minnesota (1926), 272 U. S. 469, 71 L. Ed. 259 15
Kelly v. Rhoades (1898), 188 U. S. 1, 23 Sup. Ct. 259, 47 L. Ed. 359 12
Myers v Baltimore County (1896), 83 Md. 385, 25 Atl. 144.... 15
Pittsburgh & S. Coal Co. v. Bates (1894), 156 U. S. 577, 15 Sup. Ct. 415, 39 L. Ed. 538 12
Stafford v. Wallace (1921), 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 73 ..... 4, 18
State of Minnesota v. Blasius (1932), — Minn. —, 245 N. W. 612 7
State v. Burlington Lumber Co. (1912), 118 Minn. 329, 136 N. W. 1033 16
State v. Hughes Brothers Timber Co. (1925), 163 Minn. 4, 203 N. W. 436 15
Susquehanna Coal Co. v. South Amboy (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015 ..... 12, 17, 20
Swift and Co. v. United States (1904), 196 U. S. 375, 49 L. Ed. 518 ..... 4, 18, 20
U. S. Fidelity, etc., Co. v. Kentucky (1913), 231 U. S. 394, 34 Sup. Ct. 122, 58 L. Ed. 283 21

TABLE OF STATUTES CITED.

Sec. 237 (*b*) Judicial Code (28 U. S. C. A., Sec. 344 (*b*)) 7

TEXTBOOKS AND ENCYCLOPEDIAS CITED.

Cooley, Taxation, Vol. I, Sec. 374 12
Corpus Juris, Commerce, Sec. 128 12
R. C. L., Vol. 5, Commerce, Sec. 19 12

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 764

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The Petition of the State of Minnesota respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

Your petitioner, the State of Minnesota, respectfully states that it is aggrieved by the judgment of the Supreme Court of the State of Minnesota rendered on the 9th day of December, 1932, in a suit, wherein this peti-

tioner sought to enforce collection of delinquent personal property taxes levied upon eleven head of cattle owned by the respondent. The cattle in question, coming from points either without or within the State, were consigned to the South St. Paul stockyards for sale (R. 6). Respondent, engaged in the business of a dealer in livestock at said stockyards (R. 5), bought said cattle after they were unloaded in the stockyards and put up for sale, and placed them in pens leased by him from the Stockyards Company (R. 17). At the opening of business on May 1, 1929, when the cattle were assessed for taxation, they were owned by respondent, had not been entered with any common carrier for shipment to any point (R. 7), no contract for sale or any other arrangement for sale or shipment had been made, and their final destination was unknown. Respondent subsequently sold seven of the eleven head of cattle in question on May 1st, and the other four head on the next succeeding day, May 2nd (R. 7-8). These sales were made to third parties, who in turn shipped the cattle to points outside the State (R. 7).

The trial court originally made findings disallowing the tax on the cattle (R. 10). Petitioner's subsequent motion to amend the findings was granted, and the court thereupon held the cattle taxable (R. 14). From judgment entered pursuant to these findings (R. 21), respondent appealed to the Supreme Court of the State of Minnesota, which reversed the trial court and held that the cattle were not taxable as being in interstate commerce (R. 22-28).

B.

Reasons Relied on for the Allowance of the Writ.

Importance of Question Involved.

The question of the taxability of the cattle in question is one of great importance not only to the State of Minnesota but to those other States in which stockyards such as the South St. Paul Stockyards are located. Although in the case at bar only eleven head of cattle are involved, and the amount of tax in dispute is therefore relatively small, it must be borne in mind that thousands of cattle are daily shipped in to these stockyards (R. 7), and that consequently thousands of dollars will be lost to the State of Minnesota and its subdivisions if it be not allowed to tax those cattle owned and in the possession of licensed dealers in the stockyards on the day of assessment. It must also be borne in mind that if the decision of the Supreme Court of the State of Minnesota be allowed to stand, the exemption from taxation therein granted could, by the same reasoning, be extended to the valuable supplies of meat products temporarily located in the packing plants at the Stockyards awaiting shipment to points beyond the borders of the State, and to the valuable personal property used by the Stockyards Companies themselves in conducting this business.

It is, therefore, of the utmost importance that the question be finally determined by this Court.

Conflict of Decisions.

The decision of the Supreme Court of the State of Minnesota, in the case at bar, in holding that the cattle in question had not sufficiently come to rest to subject them to the taxing power of the State of Minnesota, is contrary to and in conflict with the decision of this Court in *General Oil Co.* v. *Crain* (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755, and other applicable decisions of this Court. The two cases of *Swift and Co.* v. *United States* (1904), 196 U. S. 375, 49 L. Ed. 518, and *Stafford* v. *Wallace* (1921), 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 73, largely relied upon by the Supreme Court of the State of Minnesota to sustain its holding, involve the power of the Federal Government over Interstate Commerce rather than the limit of the State's power over Commerce among the States, and hence are of little determinative value in deciding the case at bar. The other cases cited by the court in support of its holding are all clearly distinguishable on their facts from the case at bar.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court directed to the Supreme Court of the State of Minnesota, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 29017, *State of Minnesota, Respondent,* v. *George Blasius, Appellant,* and that the judgment of the Supreme Court of the State of Minnesota may be

reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

STATE OF MINNESOTA,
Harry H. Peterson, the Attorney
General of the State of Minnesota,
State Capitol, St. Paul, Minnesota.
H. E. STASSEN,
County Attorney of Dakota County,
South St. Paul, Minnesota,
Attorneys for Petitioner.

Dated: 28th January, 1933.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 764

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT.

BRIEF IN SUPPORT OF WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of the State of Minnesota appears in — Minn. —, 245 N. W. 612, and is set forth verbatim in the Record at page 22.

II.

Jurisdiction.

1. The appellate and supervisory jurisdiction of the Supreme Court of the United States is invoked under Section 237 (*b*), Judicial Code of the United States

(28) U. S. C. A., Sec. 344 (*b*)), to correct error of the Supreme Court of the State of Minnesota in the case cited in the last preceding paragraph.

2. Final judgment of the Supreme Court of the State of Minnesota herein was entered on the 3rd day of January, 1933 (R. 28).

3. The case at bar comes within the appellate jurisdiction of this Court under Section 237 (*b*) of the Judicial Code by reason of the respondent's claim that the cattle in question were exempt from local taxation as being in the current of interstate commerce (R. 3), thus drawing in question the rights, privileges and immunities of said respondent under the Federal Constitution and Laws. The trial court held that the cattle had sufficiently come to rest to take them out of the current of interstate commerce and subject them to local taxation (R. 19). The Supreme Court of the State of Minnesota held that the trial court erred in so holding and reversed judgment of the trial court (R. 22).

Although no decisions have been found to directly support the appellate and supervisory jurisdiction of this Court under the above section of the Judicial Code, the language of the section clearly seems broad enough to support jurisdiction.

See U. S. Code Annotated, Sec. 344—Footnote 241. The section reads as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any

cause * * * where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

III.

Statement of Case.

This was an action brought by your petitioner to enforce collection of delinquent personal property taxes levied upon eleven head of cattle owned by the respondent. The cattle in question, coming from points either without or within the State, were consigned to the South Saint Paul stockyards for sale (R. 6). Respondent, engaged in the business of a dealer in livestock at said stockyards (R. 5), bought said cattle after they were unloaded in the stockyards and put up for sale, and placed them in pens leased by him from the Stockyards Company (R. 17). At the opening of business on May 1, 1929, when the cattle were assessed for taxation, they were owned by respondent, had not been entered with any common carrier for shipment to any point (R. 7), no contract for sale or any other arrangement for sale or shipment had been made, and their final destination was unknown. Respondent sold seven of the eleven head of cattle in question on May 1st, and the other four head on the next succeeding day, May 2nd (R. 7-8). These

sales were made to third parties, who in turn shipped the cattle to points outside the State (R. 7-8).

The trial court originally made findings disallowing the tax on the cattle (R. 10). Petitioner's subsequent motion to amend the findings was granted, and the court thereupon held the cattle taxable (R. 14). From judgment entered pursuant to these findings (R. 21), respondent appealed to the Supreme Court of the State of Minnesota, which reversed the trial court and held that the cattle were not taxable as being in interstate commerce (R. 22-28).

IV.

Specifications of Error.

1. The Supreme Court of the State of Minnesota erred in reversing the judgment of the trial court.

2. The Supreme Court of the State of Minnesota erred in holding that the cattle in question had not sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota.

3. The Supreme Court of the State of Minnesota erred in applying the rule laid down by those cases involving the power of the Federal Government over interstate commerce, to the case at bar, which involves the limit of the State's power over commerce among the States.

4. The Supreme Court of the State of Minnesota erred in holding that the cattle in question were not

taxable, even assuming that they were in interstate commerce at the time of the tax levy.

V.

ARGUMENT.

Summary of Argument.

Your petitioner contends that the tax involved in the case at bar was valid, and that the final judgment of the Supreme Court of the State of Minnesota, in reversing the judgment of the lower court sustaining the tax, is erroneous for the following reasons:

A. The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota.

B. The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the State's power over commerce among the States.

C. Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce.

Point A.

(Assignments of Errors 1 and 2.)

The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of

their interstate journey, and subject them to the taxing power of the State of Minnesota.

It is a well settled rule of law that property which has temporarily come to rest is subject to local taxation.

1 *Cooley, Taxation,* Sec. 374.
12 *Corpus Juris, Commerce,* Sec. 128.
5 *R. C. L. Commerce,* Sec. 19.
American Steel & Wire Co. v. *Speed* (1903), 192 U. S. 500, 24 Sup. Ct. 365, 48 L. Ed. 538.
See *Kelly* v. *Rhoads* (1898), 188 U. S. 1, 23 Sup. Ct. 259, 47 L. Ed. 259.

Thus, it has been held in the case of shipments of coal in interstate commerce, that where the coal is dumped in a yard in an intermediate State to facilitate its further shipment, it has come to rest long enough to interrupt the continuity of the interstate journey, and becomes subject to local taxation.

Susquehanna Coal Co. v. *South Amboy* (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015.

See also,

Brown v. *Houston* (1885), 114 U. S. 622, 29 L. Ed. 257.
Pittsburgh & S. Coal Co. v. *Bates* (1894), 156 U. S. 577, 39 L. Ed. 538, 15 Sup. Ct. 415.

Similarly, in the case of shipments of grain in interstate commerce, it has been held that where the grain is unloaded for weighing, cleaning, inspecting, etc., it loses its immunity from local taxation, even although

the intention of the shipper was to send it on immediately in accordance with the original contracts of transportation.

Bacon v. *Illinois* (1913), 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615.

In this case, the court said:

> "But neither the fact that the grain had come from outside the State nor the intention of the owner to send it to another State and there to dispose of it can be deemed controlling when the taxing power of the State of Illinois is concerned. The property was held by the plaintiff in error in Chicago for his own purposes and with full power of disposition. It was not being actually transported and it was not held by carriers for transportation. The plaintiff in error had withdrawn it from the carriers. The purpose of the withdrawal did not alter the fact that it had ceased to be transported and had been placed in his hands. He had the privilege of continuing the transportation under the shipping contracts, but of this he might avail himself or not as he chose. He might sell the grain in Illinois or forward it as he saw fit. It was in his possession with the control of absolute ownership. He intended to forward the grain after it had been inspected, graded, etc., but this intention, while the grain remained in his keeping and before it had been actually committed to the carriers for transportation, did not make it immune from local taxation."

Likewise, in the case of shipments of oil in interstate commerce, it has been held that where the oil is run into tanks in order to facilitate its further ship-

ment, it has come to rest temporarily, and becomes subject to local taxation.

General Oil Co. v. Crain (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755.

Gulf Refining Co. v. *Phillips* (1926), 11 F. (2d) 967.

In the *Crain* case, a Tennessee corporation shipped oil from Pennsylvania and Ohio to Memphis, Tennessee. The oil was shipped in tank cars. At Memphis, it was transferred to large tanks. The sole purpose of this transfer was to place the oil in smaller vessels in order the better to meet the requirements of orders from States farther West. The oil was kept in the tanks at most only a few days. While there, an inspection fee was charged. The court had no difficulty in holding that the oil at the time was not property in interstate commerce, and sustained the imposition of the fee.

The Supreme Court of the State of Minnesota in its opinion stated that the *Crain* case, while not specifically overruled, is no longer considered to be of controlling weight, and that there has since been a liberal construction of what is continuity of the interstate journey. In support of this statement the court cited the case of *Carson Petroleum Co.* v. *Vial* (1921), 279 U. S. 95, 49 Sup. Ct. 292, 73 L. Ed. 626. The facts of this case show that orders for the oil had already been filled and that the oil was stored only to await vessels to take it to foreign ports, or to accumulate enough oil to fill a ship. This manifestly was not a break in the continuity of the journey. It was but a delay in

the continuity of movement incidental to that journey —a necessary means of securing prompt transshipment. *Only the mechanics of transportation were involved.*

See *Hughes Bros. Timber Co.* v. *Minnesota*, (1926) 272 U. S. 469, 71 L. Ed. 259, reversing *State* v. *Hughes Bros. Timber Co.*, (1925) 163 Minn. 4, 203 N. W. 436, where the court, in holding that certain logs being driven to booms, there to await the opening of transportation, were not taxable, said:

> "The delays in the continuity of movement were only incidental to the journey and the necessary change in the mode of transportation by which the logs were carried from a place in one State to a place agreed upon in another."

But there is a distinction between this and the case where something more than the mechanics of transportation is involved. This was pointed out by the Maryland Court in *Myers* v. *Baltimore County*, (1896) 83 Md. 385, 35 Atl. 144, the facts of which case are almost identical to those of the case at bar. Plaintiffs, cattle dealers offcing at the Baltimore stockyards, bought cattle as they came into the stockyards from the western states, and shipped at least two-thirds of them on to buyers in other states. The cattle rarely remained in the stockyards for more than a day. Certain of these cattle were taxed by the local authorities. In upholding the tax, the court said:

> "We cannot hold in this case that at the period of assessment any of these cattle were in the course of transportation. In the regular

course of business the cattle purchased by the appellants are shipped to themselves in Baltimore, to be there disposed of as they may deem most advantageous to their own interests. *Once at the Union Stockyards, the transportation ceases, until, at the pleasure of the appellants, they are again shipped. They are not held there to await a steamer or a train, but for the convenience of the owners, in order that they may determine which of them they will sell in the home market and which they will ship to the foreign, or any other disposition they may choose.* * * * The property, then, not being in transit, either through the state, or from a point in the state to a point outside, is 'property within the state,' within the meaning of the statute." (Italics ours.)

See also, *State* v. *Burlington Lumber Co.*, (1912) 118 Minn. 329, 136 N. W. 1033, where the court, in sustaining a tax on logs which had been stopped at a boom, there to be assembled for shipment out of the state, said:

> "It is sufficient to say that the boom of the St. Paul Boom Co. appears to have been the place of assembling the logs for their final preparation for shipment, *as distinguished from a mere way or transfer station on a continuous, unbroken journey;* and such being the case, it must be held that the interstate transit did not begin until the deliveries to the steamer on May 2 and 6, respectively." (Italics ours.)

It is submitted that there is a marked distinction between the situation where the particular objects sought to be taxed have come to rest temporarily to

suit the convenience of the owners, and the situation where they have not come to rest at all, or have come to rest only to await the coming of a steamer or train or for some other reason purely incidental to the journey. It is significant that this Court's liberality in construing what is continuity of the interstate journey, referred to by the Minnesota Court, is confined to those cases involving the latter type of situation. In the former type of situation this Court has repeatedly held that the continuity of the interstate journey is broken.

Susquehanna Coal Co. v. *South Amboy, supra.*
Bacon v. *Illinois, supra.*
General Oil Co. v. *Crain, supra.*

The facts of the case at bar, it is submitted, bring it within the former situation. Something more than the mechanics of transportation was involved. The cattle were shipped to the stockyards to be there sold and resold. Neither the dealer in the stockyards who was to buy them in the first instance, nor the ultimate buyer, was known at the time the original shipment was made (R. 6). After buying the cattle, the dealer kept them in pens assigned to him at his pleasure until he sold them to third party purchasers (R. 17).

By reason of these distinguishing factors, it is submitted that there was, in the case at bar, a very definite break in the continuity of the interstate journey.

Point B.

(Assignment of Errors 1 and 3.)

The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the state's power over commerce among the states.

The Supreme Court of the State of Minnesota based its decision very largely upon language used in the two cases of *Swift and Co.* v. *United States,* (1904) 196 U. S. 375, 49 L. Ed. 519, and *Stafford* v. *Wallace,* (1921) 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 735. Both of these cases involve the power of the federal government over interstate commerce rather than the limit of the state's power over commerce among the states. That there is a distinction between the two types of cases is well brought out in the case of *Bacon* v. *Illinois,* (1913) 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615, where the court said:

> "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority."

In both the *Swift and Co.* and the *Stafford* v. *Wallace* cases, the decisions in the tax cases were urged by the packers as a basis for their contention that the

Federal Government should not be permitted to interfere in the stockyards, and this distinction between Federal regulation and State taxation was clearly made by the court. In the former case the court said (at p. 400):

> "But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states."

And in the latter case, the court said (at p. 525):

> "The other cases relied on by appellants are less relevant to this discussion than the *Anderson* and *Hopkins* cases. Some of them are tax cases. As to them it is well to bear in mind the words of the court in the *Swift* case (p. 400):
>
> 'But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states.'"

From these quotations it can be seen that the United States Supreme Court expressly refused to follow the tax cases in these cases involving the power of the Federal Government over interstate commerce, and explicitly distinguished the two types of cases. It would logically seem to follow that these decisions cannot be used or followed in turning back and changing the established rules in the tax cases.

It is true that the court in the *Swift* case went on to say by way of dictum:

> "It should be added that the cattle in the stockyards are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365."

But in view of the fact that this statement was only *obiter dictum*, and in view of the further fact that since the decision in the *Swift* case the Supreme Court in analogous situations has directly held that the object sought to be taxed has come to rest sufficiently to be subject to local taxation,

> *Susquehanna Coal Co.* v. *South Amboy* (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015 (coal).
>
> *Bacon* v. *Illinois* (1913), 227 U. S. 504 (grain).
>
> *General Oil Co.* v. *Crain* (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755 (oil).

it is submitted that this statement can be given very little, if any, weight.

Point C.

(Assignment of Errors 1 and 4.)

Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce.

The court in *Swift and Co.* v. *United States, supra*, said:

> "But it may be that the question of taxation does not depend upon whether the article taxed may or may not be said to be in the course of commerce between the states, but depends on whether the tax so far affects that commerce as to amount to a regulation of it."

Although this is only dictum, it finds support in the case of *U. S. Fidelity, etc., Co.* v. *Kentucky* (1913), 231 U. S. 394, 34 Sup. Ct. 122, 58 L. Ed. 283, where the court, in upholding a privilege tax on conducting certain commercial agencies, said:

> "To warrant interference (by the courts) with the exercise of the taxing power of a State on the ground that it obstructs or hampers interstate commerce, it must appear that the burden is direct and substantial."

Assuming, for the moment, then, that the cattle were in interstate commerce at the time the tax was levied, does the tax so far affect that interstate commerce as to amount to a regulation of it? In *Stafford* v. *Wallace, supra,* the following language of the court appears:

> "Moreover, it will be noted that even in the tax cases, where the tax is directed against a commodity in an actual flowing and constant stream out of the state, from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an

established course of business. *United Fuel & Gas Co.* v. *Hallanan*, 257 U. S. 277; *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265."

It is to be noted, however, that in both cases relied upon by the court as a basis for this statement, the tax was on the *flow* of the oil or gas. In the *Eureka Pipe Line Co.* case, the oil was taxed under a statute forbidding engaging in the business of transporting petroleum or gas in pipe lines without the payment of a tax of two cents for each barrel of oil transported. In the *United Fuel Gas Co.* case, gas was taxed under the same sort of statute. Such a tax, it can readily be seen, does amount to a regulation of interstate commerce. If the State of Minnesota should attempt to place a tax on every head of cattle entering or leaving the South St. Paul stockyards, such a tax, it is submitted, would be somewhat analogous to those involved in the *Eureka Pipe Line Co.* and *United Fuel Gas Co.* cases. *On the other hand, a mere personal property tax such as that involved in the instant case, imposed alike upon all property situate in the State,* can hardly be said to impose a direct and substantial burden upon interstate commerce, and is clearly not analogous to those involved in the *Eureka Pipe Line Co.* and *United Fuel Gas Co.* cases.

Conclusion.

It is therefore respectfully submitted that the case at bar is one calling for the exercise, by this Court, of its supervisory powers to correct error of the Supreme Court of the State of Minnesota in deciding a Federal

question of substance in a way not in accord with applicable decisions of this Court. To such end it is respectfully submitted that a Writ of Certiorari should be granted and this Court should review the decision of the Supreme Court of the State of Minnesota and reverse it.

Respectfully submitted,

HARRY H. PETERSON,
Attorney General of the State of Minnesota,
State Capitol, St. Paul, Minnesota.
H. E. STASSEN,
County Attorney of Dakota County,
South St. Paul, Minnesota,
Attorneys for Petitioner.

CHARLES P. STONE,
South St. Paul, Minnesota,
On the brief.

INDEX.

Subject Index.

Brief for petitioner:	Page
I. The opinion of the court below	1
II. Jurisdiction	1
III. Statement of case	3
IV. Specifications of error	4
V. Argument:	
Summary of argument	4
Point A. The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota	5
Point B. The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the State's power over commerce among the States	16
Point C. Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce	20
Conclusion	22

Table of Cases Cited.

American Steel & Wire Co. v. Speed (1904), 192 U. S. 500, 24 Sup. Ct. 365, 48 L. Ed. 538 7

Bacon v. Illinois (1913), 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615 ..... 9, 16, 19

Brown v. Houston (1885), 114 U. S. 622, 29 L. Ed. 257 6

Carson Petroleum Co. v. Vial (1929), 279 U. S. 95, 49 Sup. Ct. 292, 73 L. Ed. 626 ..... 8, 13

Champlain Realty Company v. Brattleboro (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195 13

Coe v. Errol (1886), 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715 12

Diamond Match Company v. Ontonagon (1903), 188 U. S. 82, 23 S. Ct. 266, 47 L. Ed. 394 7

Eureka Pipe Line Co. v. Hallanan (1921), 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227 ..... 14, 21, 22

General Oil Co. v. Crain (1908), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 754 ..... 8, 19

Page

Gulf Refining Co. v. Phillips (1926), 11 F. (2nd) 967 9
Hughes Bros. Timber Co. v. Minnesota (1926), 272 U. S. 469, 71 L. Ed. 359 ..... 6, 13
Kelley v. Rhoads (1903), 188 U. S. 1, 23 Sup. Ct. 259, 47 L. Ed. 359 12
Missouri Pacific R. Co. v. Schnipper (1931), 51 F. Second Series, 749 ..... 6, 8, 11, 14
Myers v. Baltimore County (1896), 83 Md. 385, 35 Atl. 144 10
Pittsburgh & S. Coal Co. v. Bates (1895), 156 U. S. 577, 15 Sup. Ct. 415, 39 L. Ed. 538 7
Stafford v. Wallace (1922), 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 735 ..... 16, 19, 21
State v. Blasius (1932), 187 Minn, 420, 245 N. W. 612 1
State v. Burlington Lumber Co. (1912), 118 Minn. 329, 136 N. W. 1033. 11
Susquehanna Coal Co. v. South Amboy (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015 ..... 10, 19
Swift and Co. v. United States (1905), 196 U. S. 375, 49 L. Ed. 518 ..... 16, 17, 18, 19, 20
United Fuel and Gas Co. v. Hallanan (1921), 257 U. S. 277, 66 L. Ed. 234 ..... 14, 15, 21, 22
U. S. Fidelity, etc., Co. v. Kentucky (1913), 231 U. S. 394, 34 Sup. Ct. 122, 58 L. Ed. 283 20

TABLE OF STATUTES CITED.

Sec. 344, U. S. Code, Annotated, Footnote 241 2
Sec. 237 (b), Judicial Code (28 U. S. C. A., Sec. 344 (b)) 2

TEXTBOOKS AND ENCYCLOPEDIAS CITED.

Cooley, Taxation, Vol. I (4 Ed.), Sec. 374 20
Cooley, Taxation, Vol. I (4 Ed.), Sec. 383 5
Corpus Juris, Vol. 12, Commerce, Sec. 128 6
R. C. L., Vol. 5, Commerce, Sec. 19 6

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 7

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

BRIEF FOR PETITIONER.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of the State of Minnesota appears in 187 Minn. 420, 245 N. W. 612, and is set forth verbatim in the Record at page 22.

II.

Jurisdiction.

1. The appellate and supervisory jurisdiction of the Supreme Court of the United States is invoked under Sec-

tion 237 (b), Judicial Code of the United States (28) U. S. C. A., Sec. 344 (b), to correct error of the Supreme Court of the State of Minnesota in the case cited in the last preceding paragraph.

2. Final judgment of the Supreme Court of the State of Minnesota herein was entered on the 3rd day of January, 1933 (R. 28).

3. The case at bar comes within the appellate jurisdiction of this Court under Section 237 (b) of the Judicial Code by reason of the respondent's claim that the cattle in question were exempt from local taxation as being in the current of interstate commerce (R. 3), thus drawing in question the rights, privileges and immunities of said respondent under the Federal Constitution and Laws. The trial court held that the cattle had sufficiently come to rest to take them out of the current of interstate commerce and subject them to local taxation (R. 19). The Supreme Court of the State of Minnesota held that the trial court erred in so holding and reversed judgment of the trial court (R. 22).

Although no decisions have been found to directly support the appellate and supervisory jurisdiction of this Court under the above section of the Judicial Code, the language of the section clearly seems broad enough to support jurisdiction.

See U. S. Code Annotated, Sec. 344—Footnote 241. The section reads as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause * * * where any title, right, privilege or immunity is specially set up or claimed

by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

III.

Statement of Case.

This was an action brought by your petitioner to enforce collection of delinquent personal property taxes levied upon eleven head of cattle owned by the respondent. The cattle in question, coming from points either without or within the State, were consigned to the South Saint Paul, Minnesota, stockyards for sale (R. 6). Respondent, engaged in the business of a dealer in livestock at said stockyards (R. 5), bought said cattle after they were unloaded in the stockyards and put up for sale, and placed them in pens leased by him from the Stockyards Company (R. 17). At the opening of business on May 1, 1929, when the cattle were assessed for taxation, they were owned by the respondent, had not been entered with any common carrier for shipment to any point (R. 7), no contract for sale or any other arrangement for sale or shipment had been made, and their final destination was unknown. Respondent sold seven of the eleven head of cattle in question on May 1, and the other four head on the next succeeding day, May 2 (R. 7-8). These sales were made to third parties, who in turn shipped the cattle to points outside the State (R.7-8).

The trial court originally made findings disallowing the tax on the cattle (R. 10). Petitioner's subsequent motion to amend the findings was granted, and the court thereupon held the cattle taxable (R. 14). From judgment entered pursuant to these findings (R. 21), respondent appealed to the Supreme Court of the State of Minnesota,

which reversed the trial court and held that the cattle were not taxable as being in interstate commerce (R. 22-28).

IV.

Specifications of Error.

1. The Supreme Court of the State of Minnesota erred in reversing the judgment of the trial court.

2. The Supreme Court of the State of Minnesota erred in holding that the cattle in question had not sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota.

3. The Supreme Court of the State of Minnesota erred in applying the rule laid down by those cases involving the power of the Federal Government over interstate commerce, to the case at bar, which involves the limit of the State's power over commerce among the States.

4. The Supreme Court of the State of Minnesota erred in holding that the cattle in question were not taxable, even assuming that they were in interstate commerce at the time of the tax levy.

V.

ARGUMENT.

Summary of Argument.

Your petitioner contends that the tax involved in the case at bar was valid, and that the final judgment of the Supreme Court of the State of Minnesota, in reversing the judgment of the lower court sustaining the tax, is erroneous for the following reasons:

A. The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of their

interstate journey and subject them to the taxing power of the State of Minnesota.

B. The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the State's power over commerce among the States.

C. Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce.

Point A.

(Assignment of Errors 1 and 2.)

The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota.

The general rules relating to the local taxation of property which has temporarily come to rest are set forth in the following statements from the authorities:

> "The general rule is that property temporarily at rest is taxable, as where the transit has been interrupted and the property is held in storage or at distributing points to be delivered to buyers or reshipped to other places. Merchandise may cease to be interstate commerce at an intermediate point between the place of shipment and ultimate destination, and if kept at such point for the use and profit of the owners and under the protection of the laws of the state, it becomes subject to the taxing power of the state."
>
> 1 *Cooley, Taxation* (4 ed.), Section 383.

> "The weight of authority, as found in later cases, is to the effect that, to entitle an article of commerce to be exempt from state taxation, there must be a con-

tinuous movement of it in interstate commerce, and that it may be taxed by the state when it is held at storage or distributing points, with the intention of delivering it to buyers or of transshipping to other points."

12 *C. J., Commerce,* Section 128.

"From the time of delivery of property to a common carrier for interstate transportation, until delivery to the consignee, the federal protection continues only while the goods are in actual transit, consequently, if property is detained for an indefinite time during such transit, at least for other than natural causes or lack of facilities for immediate transportation, it is not during that time the subject of interstate commerce but is subject to the operation of state laws."

5 *R. C. L., Commerce,* Section 19.

Whether in a given case commodities moving in interstate commerce are subject to local taxation at the point of interruption must be determined from the character of the interruption and the circumstances surrounding the interruption.

Hughes Bros. Timber Co. v. *Minnesota* (1926), 272 U. S. 469, 71 L. Ed. 359.

Missouri Pac. R. Co. v. *Schnipper* (1931), 51 F., Second Series, 749.

In the following cases the passage of commodities from point of origin to final destination was interrupted under circumstances held by the courts to have broken their continuity in transit so as to subject them to local taxation at the point of interruption:

In the case of *Brown* v. *Houston* (1885), 114 U. S. 622, 29 L. Ed. 257, it was held that coal mined in Pennsylvania and sent by water to New Orleans to be sold in open market there on account of the owners in Pennsylvania, became intermingled, on arrival there, with the general property in

the State of Louisiana, and was subject to taxation under general laws of that State, although it might be, after arrival, sold from the vessel on which the transportation was made, and without being landed, and for the purpose of being taken out of the country on a vessel bound to a foreign port.

In *Pittsburgh and Southern Coal Company* v. *Bates* (1895), 156 U. S. 577, 15 S. Ct. 415, 39 L. Ed. 538, it was held that coal, shipped by the owners at Pittsburgh in their own barges to Baton Rouge for the purpose of being sold there or sent thence to supply orders, and moored at Baton Rouge in the original barges in which it was shipped at Pittsburgh, is subject to local taxation there as a stock in trade, and such imposition of a tax violates no provision of the Constitution of the United States.

In *Diamond Match Company* v. *Ontonagon* (1903), 188 U. S. 82, 23 S. Ct. 266, 47 L. Ed. 394, logs floated by owner down the Ontonagon River and its tributaries to booms at its mouth at the village of Ontonagon, Michigan, there to be loaded on cars for transportation by railway to the owner's mills at Green Bay, Wisconsin, were held to be liable for taxation at Ontonagon, in view of the evidence that this place was used by the owner as assorting grounds and to hold the logs until such times as they were needed to keep the mills supplied to capacity in Green Bay.

In the case of *American Steel and Wire Co.* v. *Speed* (1904), 192 U. S. 500, 24 S. Ct. 365, 48 L. Ed. 538, the court held that goods brought in original packages from another state, after they have arrived at their destination and are at rest within the state, and are enjoying the protection which the laws of the state afford, may, without violating the commerce clause of the Constitution, be taxed without discrimination like other property within the state, although at the time they are stored at a distributing point from

which they are subsequently to be delivered in the same packages, through the storage company to purchasers in various states.

As is pointed out in the case of *Missouri Pac. R. Co.* v. *Schnipper*, supra, the court recognized that the goods in the hands of the storage company in the original packages may not have entirely lost their character as subjects of interstate commerce, but held, nevertheless, that they were taxable in view of the circumstances shown by the evidence.

In the case of *General Oil Co.* v. *Crain* (1908), 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754, the facts were as follows:

A Tennessee corporation shipped oil from Pennsylvania and Ohio, to Memphis, Tennessee. The oil was shipped in tank cars. At Memphis it was transferred to large tanks. The sole purpose of this transfer was to place the oil in smaller vessels in order to better meet the requirements of orders further west. The oil was kept in the large tanks at most only a few days. While there an inspection fee was charged. Under these facts, the court held that the oil at the time it was stored in the tanks at Memphis, Tennessee, was taxable and, therefore, sustained the imposition of the inspection fee.

The Supreme Court of the State of Minnesota in its opinion in the case at bar stated that the Crain case, while not specifically overruled, is no longer considered to be of controlling weight, and that there has since been a liberal construction of what is continuity of the interstate journey. In support of this statement the court cited the case of *Carson Petroleum Co.* v. *Vial* (1929), 279 U. S. 95, 49 Sup. Ct. 292, 73 L. Ed. 626. The facts of that case show that orders for the oil had already been filled and that the oil was stored only to await vessels to take it to foreign ports, or to accumulate enough oil to fill a ship. This manifestly was not a break in the continuity of the journey. It was

but a delay in the continuity of movement incidental to that journey—a necessary means of securing prompt transshipment. *Only the mechanics of transportation were involved.* As pointed out above, the shipment in the Crain case was brought to rest for the convenience and advantage of the owner. See *Gulf Refining Co.* v. *Phillips* (1926), 11 F. (2d) 967.

In the case of *Bacon* v. *Illinois* (1913), 227 U. S. 504, 33 S. Ct. 299, 57 L. Ed. 615, it was held that where grain was unloaded for weighing, cleaning, inspection, etc., it lost its immunity from local taxation, even though the intention of the shipper was to send it on immediately thereafter in accordance with the original contract of transportation. In this case the court said:

> "But neither the fact that the grain had come from outside the State nor the intention of the owner to send it to another State and there to dispose of it can be deemed controlling when the taxing power of the State of Illinois is concerned. The property was held by the plaintiff in error in Chicago for his own purposes and with full power of disposition. It was not being actually transported and it was not held by carriers for transportation. The plaintiff in error had withdrawn it from the carriers. The purpose of the withdrawal did not alter the fact that it had ceased to be transported and had been placed in his hands. He had the privilege of continuing the transportation under the shipping contracts, but of this he might avail himself or not as he chose. He might sell the grain in Illinois or forward it as he saw fit. It was in his possession with the control of absolute ownership. He intended to forward the grain after it had been inspected, graded, etc., but this intention, while the grain remained in his keeping and before it had been actually committed to the carriers for transportation, did not make it immune from local taxation."

In *Susquehanna Coal Company* v. *South Amboy* (1913), 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015, coal shipped from Pennsylvania to South Amboy, New Jersey, and intended for further shipment to ports in other states or countries, but not definitely determined, and stored while awaiting orders or means of transportation for orders already received was held subject to taxation by the municipality within whose jurisdiction it was stored because the interruption was not only an incident of or in furtherance of the transportation, but also served other beneficial purposes of the owner. The court said:

> "There was something more than the submission to delay in transportation and the acceptance of its consequences. This situation was made a facility of business, a business conducted through agents and employes. And, it will be observed, there was valuable property kept in the State represented by the coal, varying in quantity from 10,000 tons to 150,000 tons. There was something more, therefore, than an incidental interruption of the continuity of its journey through the State. The coal, therefore, was not in actual movement through the State; it was at rest in the State, and was to be handled and distributed from there. Therefore, the principles expressed in *General Oil Co.* v. *Crain*, 209 U. S. 211, and *Bacon* v. *Illinois*, 227 U. S. 504, are applicable to it. The products in neither of those cases were destined for sale in the States where stored; the delay there was to be temporary, a postponement of their transportation to their destinations. There was, however, a business purpose and advantage in the delay which was availed of, and while it was availed of, the products secured the protection of the State. In both cases it was held that there was a cessation of interstate commerce and subjection to the dominion of the State."

In the case of *Myers* v. *Baltimore County* (1896), 83 Md. 385, 35 Atl. 144, in which the plaintiffs, cattle dealers officing

at Baltimore stockyards, bought cattle after they came to the stockyards from the western states and shipped at least two-thirds of them to buyers in other states, the cattle rarely remaining in the stockyards for more than a day, the court held that these cattle were subject to local taxation. In upholding the tax, the court said:

> "We cannot hold in this case that at the period of assessment any of these cattle were in the course of transportation. In the regular course of business the cattle purchased by the appellants are shipped to themselves in Baltimore, to be there disposed of as they may deem most advantageous to their own interests. *Once at the Union Stockyards, the transportation ceases, until, at the pleasure of the appellants, they are again shipped. They are not held there to await a steamer or a train, but for the convenience of the owners, in order that they may determine which of them they will sell in the home market and which they will ship to the foreign, or any other disposition they may choose.* * * * The property, then, not being in transit either through the state, or from a point in the state to a point outside, is 'property within the state', within the meaning of the statute." (Italics ours.)

See also *State* v. *Burlington Lumber Co.* (1912), 118 Minn. 329, 136 N. W. 1033, where the court, in sustaining a tax on logs which had been stopped at a boom, there to be assembled for shipment out of the State, said:

> "It is sufficient to say that the boom of the St. Paul Boom Co. appears to have been the place of assembling the logs, for their final preparation for shipment, *as distinguished from a mere way or transfer station on a continuous, unbroken journey;* and such being the case, it must be held that the interstate transit did not begin until the deliveries to the steamer on May 2 and 6, respectively." (Italics ours.)

In the case of *Missouri Pac. R. Co.* v. *Schnipper, supra,* the court held that railroad ties originally interstate ship-

ment but temporarily in Illinois under privilege of stop-over for creosoting at a creosoting plant were temporarily withdrawn from interstate transportation while at said plant and therefore subject to general property tax in Illinois.

In the following cases it was held that under the circumstances the intermediate interruption and consequent delay in the interstate journey would not render the shipment liable to local taxation at the point of interruption.

In the case of *Coe* v. *Errol* (1886), 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715, the court held that logs which were cut in New Hampshire and started their interstate journey on a river in that State to be transported thence down the river to the State of Maine, and which were detained for a season in New Hampshire by low water were not subject to taxation in New Hampshire at the point of detention since the interstate shipment movement had begun and the delay was entirely due and incidental to the means of transportation.

In *Kelley* v. *Rhoads* (1903), 188 U. S. 1, 23 S. Ct. 259, 47 L. Ed. 359, the court held that a herd of sheep driven at a reasonable rate of speed from a point in Utah, across the State of Wyoming, a distance of about five hundred miles, to a point in Nebraska, for the purpose of shipment by rail from the latter point, is property engaged in interstate commerce to such an extent as to be exempt from taxation by the State of Wyoming under a statute taxing all live stock brought into the State for the purpose of being grazed; and this notwithstanding that the sheep were maintained by grazing along the route, and that the owner could have shipped them to their ultimate destination from a point on the same railroad, which could have been reached from the starting point without entering the State of Wyoming. In the above mentioned case the court held that the

sheep were not subject to taxation in Wyoming because they had not been brought into the State for the purpose of being grazed, but that such grazing was necessary for their sustenance and incidental to their continuous journey through the State. In its decision the court said:

> "The question turns upon the purpose for which the sheep were driven into the State. If for the purpose of being grazed, they are expressly within the first section of the act. But if for the purpose of being driven through the State to a market, they would be exempt as a subject of interstate commerce, though they might incidentally have supported themselves in grazing while actually in transit."

In the case of *Champlain Realty Company* v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195, it was held that logs, under control of their owner, which are being floated in a river in continuous movement from one State to another, or which, in the course of their interstate journey, are being temporarily detained by a boom to await subsidence of high waters and for the sole purpose of saving them from loss, are in interstate commerce and not subject to State taxation.

In *Hughes Bros. Timber Co.* v. *Minnesota* (1926), *supra*, certain logs which were driven to booms, there to await the opening of transportation, were not taxable while so awaiting the opening of transportation. In this case the court said:

> "Delays in the continuity of movement were only incidental to the journey and the necessary change in mode of transportation by which the logs were carried from a place in one state to a place agreed upon in another."

In the case of *Carson Petroleum Company* v. *Vial, supra*, the court held that oil purchased at interior points for ex-

port to fill contracts previously made did not lose its character as foreign commerce, and become subject to taxation because after arrival at the port it was temporarily stored there for reasons of expedition and economy preparatory to being loaded on vessels of foreign consignees, it appearing that the delay was incidental to and in aid of transshipment in foreign commerce and therefore did not break the continuity in transit of the commodity.

In contrasting and comparing the two groups of cases which we have hereinbefore discussed the court in the case of *Missouri Pac. R. Co.* v. *Schnipper, supra,* said:

> "In the group of cases in which the right of the state to tax was sustained, it will be observed that the controlling principle is precisely the same as that recognized in the cases in which the right of taxation was denied; that is, that any interruption of the movement of commodities at an intermediate point between origin and final destination that is not incidental to the transportation or the use of the means of transportation, or, being so incidental, is used or extended for purposes of the owner not incidental to the transportation or the means used therefor, breaks the continuity in transit and subjects the shipment to local taxation at the point of interruption. Under such circumstances a shipment is looked upon as being withdrawn from interstate commerce to an extent that its taxation by local authorities does not amount to a regulation or direct burdening of interstate commerce."

The cases of *Eureka Pipe Line Co.* v. *Hallanan* (1921), 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227, and *United Fuel and Gas Co.* v. *Hallanan* (1921), 257 U. S. 277, 66 L. Ed. 234, which are cited and discussed in the decision rendered by the Minnesota Supreme Court in the case at bar as authority for holding that the tax on the cows in the case at bar is invalid do not fall into either of the two groups

of cases which are hereinbefore discussed. In these cases the court declares invalid a State law imposing a tax upon the transportation of oil and gas which flow through pipe lines out of the State on the ground that such oil and gas were subjects of interstate commerce, and that the tax on the transportation of such oil and gas from one State to another was a direct tax on interstate commerce. In neither of these cases does the oil or gas which eventually flows out of the State imposing the tax come to rest in that State during the course of its transportation as do the cattle in the case at bar. As stated by the court in the case of *United Fuel and Gas Co.* v. *Hallanan, supra,* "there is no break, no deliberation, but a steady flow, ending as contemplated from the beginning beyond the state line." Hence, we submit that the Minnesota Supreme Court erred in its contention that these cases support its decision in the case at bar.

We believe that the case at bar clearly falls within the group of cases in which the right to tax at the point of interruption was upheld. We submit that when the cattle in the case at bar came to rest in South St. Paul something more than the mere mechanics of transportation was involved and that this interruption was not a mere incident in their transportation to the ultimate purchaser. The cattle were shipped to the stockyards to be there sold and re-sold. Neither the dealer in the stockyards who was to buy them in the first instance, nor the ultimate buyer were known at the time the original shipment was made (R. 6). After buying the cattle the dealer kept them in pens assigned to him until he sold them to third party purchasers (R. 17). At the time the tax was assessed the dealer owned the cattle and had offered them for sale, but had not yet sold any of them. At the time of the assessment of these cattle this dealer was taking care of these cattle preparatory to selling them and was attempting to sell them. He

was engaged in business with reference to the cattle in the State of Minnesota, and under the protection of its laws. He should pay the State of Minnesota a tax on these cattle for these privileges. True the cattle remained in his possession only a short time after delivery but they, doubtless, represented the average number of cattle which were in his hands at any other time during the course of the year and on which he paid no personal property tax.

POINT B.

(Assignment of Errors 1 and 3.)

The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the State's power over commerce among the States.

The Supreme Court of the State of Minnesota based its decision very largely upon language used in the two cases of *Swift and Co.* v. *United States* (1905), 196 U. S. 375, 49 L. Ed. 518, and *Stafford* v. *Wallace* (1922), 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 735. Both of these cases involve the power of the Federal Government over interstate commerce rather than the limit of the State's power over commerce among the States. That there is a distinction between the two types of cases is well brought out in the case of *Bacon* v. *Illinois* (1913), 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615, where the court said:

> "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority."

In both the *Swift and Co.* and the *Stafford* v. *Wallace* cases the decisions in the tax cases were urged by the packers as a basis for their contention that the Federal Government should not be permitted to interfere in the stockyards, and this distinction between Federal regulation and State taxation was clearly made by the court. In the former case the court said (at p. 400):

> "But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states,"

and in the latter case, the court said (at p. 525):

> "The other cases relied on by appellants are less relevant to the discussion than the *Anderson* and *Hopkins* cases. Some of them are tax cases. As to them it is well to bear in mind the words of the court in the *Swift* case (p. 400):
>
> " 'But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states.'
>
> "Thus, take the case of *Bacon* v. *Illinois*, 227 U. S. 504, Bacon had purchased grain in transit from a western State to the east. He exercised the power under his contract to stop the grain in Illinois and put it in a grain elevator there. He intended to send it on to some other state for sale. He might have changed his mind. He did, however, after a time, send it out of the State. The grain was taxed while it was in Illinois. The question was whether it was immune from taxation because in transit in interstate commerce. * * * It was

held that property in a State which its owner intends to transport to some other state, but which is not in actual transit and in respect to the disposition of which he may change his mind is not in interstate commerce just because of the intention of its owner, and may, therefore, be taxed by the State where it is. The court brought out the distinction between such cases and this in the remark (p. 516):

"'The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority.'"

From these quotations it is clearly apparent that the United States Supreme Court expressly refused to follow the tax cases in these cases involving the power of the Federal Government over interstate commerce, and explicitly distinguished the two types of cases. It therefore follows that these decisions cannot be used to turn back and change the established rules in the tax cases.

It is true that the court in the *Swift* case went on to say by way of dictum:

"It should be added that the cattle in the stockyards are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365."

But in view of the fact that this statement was only *obiter dictum*, and in view of the further facts that since the decision in the *Swift* case the Supreme Court in analogous situations has directly held that the object sought to be taxed has come to rest sufficiently to be subject to local taxation.

Susquehanna Coal Co. v. *South Amboy* (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015 (coal).
Bacon v. *Illinois* (1913), 227 U. S. 504 (grain).
General Oil Co. v. *Crain* (1908), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 754 (oil).

it is submitted that this statement can be given very little, if any, weight.

In the case of *Stafford* v. *Wallace* (1922), *supra,* the court merely reaffirms the principles laid down in the case of *Swift & Co.* v. *United States* (1905), *supra.* As appears from the foregoing quotations from the two cases with respect to the distinction between Federal regulation and State taxation, the latter case points out this distinction more clearly than does the former case. The fact that after its decision in the *Swift* case, which was made in 1907, the Supreme Court of United States in the cases of *Susquehanna Coal Co.* v. *South Amboy, supra* (1913), and *Bacon* v. *Illinois* (1913), *supra,* and *General Oil Co.* v. *Crain* (1908), *supra,* not only held to its doctrine relative to the right of a state to tax commodities in interstate commerce which had come to rest for a purpose which was not entirely incident to transportation, but in the *Crain* case seems to have given this doctrine a more liberal interpretation than ever before, clearly demonstrates that the said court in the *Swift* and *Stafford* cases did not intend to abandon or modify this doctrine.

Point C.

(Assignment of Errors 1 and 4.)

Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce.

The following rules with reference to the right of the state to tax commodities in interstate commerce are laid down in *Volume I Cooley on Taxation* (4 *Ed.*), *Section* 374:

> "To warrant interference with the exercise of the taxing power of a state on the ground that it obstructs or hampers interstate commerce, it must appear that the burden is direct and substantial and not merely incidental and fortuitous. A tax is not invalid merely because it affects interstate commerce and impedes the transit of persons and property from one state to another 'just in the same way, and in no other, that taxation of any kind necessarily increases the expenses attendant upon the use of possession of the thing taxed'."

The court in *Swift and Co.* v. *United States, supra,* said:

> "But it may be that the question of taxation does not depend upon whether the articles taxed may or may not be said to be in the course of commerce between the states, but depends on whether the tax so far affects that commerce as to amount to a regulation of it."

Although this is only dictum, it finds support in the case of *U. S. Fidelity, etc., Co.* v. *Kentucky* (1913), 231 U. S. 394, 34 Sup. Ct. 122, 58 L. Ed. 283, where the court, in upholding a privilege tax on conducting certain commercial agencies, said:

> "To warrant interference (by the courts) with the exercise of the taxing power of a State on the ground

that it obstructs or hampers interstate commerce, it must appear that the burden is direct and substantial."

Even assuming that the cattle in the case at bar were subjects of interstate commerce at the time the tax was imposed, we submit that under the foregoing rules, the said tax was not a direct and substantial burden on interstate commerce and did not amount to a regulation of interstate commerce. In the case of *Stafford* v. *Wallace, supra,* the court makes the following statement relative to the decisions of the court in the cases of *United Fuel and Gas Co.* v. *Hallanan, supra,* and *Eureka Pipe Line Co.* v. *Hallanan, supra:*

> "Moreover, it will be noted that even in the tax cases, where the tax is directed against a commodity in an actual flowing and constant stream out of the state, from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an established course of business."

In one of these cases concerning which the court makes this statement the tax involved was a tax on the flow of the oil, and in the other case the tax involved was a tax on the flow of gas. In the *Eureka Pipe Line Co.* case, the oil was taxed under a statute forbidding engaging in the business of transporting petroleum or gas in pipe lines without the payment of a tax of two cents for each barrel of oil transported. In the *United Fuel Gas Co.* case, gas was taxed under the same statute. Such a tax, it can readily be seen, does amount to a regulation of interstate commerce. If the State of Minnesota should attempt to place a tax on every head of cattle entering or leaving the South St. Paul

stockyards, such a tax, it is submitted, would be somewhat analogous to those involved in the *Eureka Pipe Line Co.* and *United Fuel Gas Co.* cases. *On the other hand, a mere personal property tax such as that involved in the instant case, imposed alike upon all property situate in the State,* can hardly be said to impose a direct and substantial burden upon interstate commerce, and is clearly not analogous to the tax involved in either the *Eureka Pipe Line Co.* or the *United Fuel Gas Co.* case.

Conclusion.

For the reasons which are hereinbefore set forth and under the authorities and legal principles which have been discussed in this brief, we respectfully submit that the decision of the Supreme Court of Minnesota should be reversed.

Respectfully submitted,

HARRY H. PETERSON,
Attorney General of the State of Minnesota;
WILLIAM S. ERVIN,
Assistant Attorney General
of the State of Minnesota,
State Capitol, St. Paul, Minnesota;
H. E. STASSEN,
County Attorney of Dakota County,
South St. Paul, Minnesota,
Attorneys for Petitioner.

CHARLES P. STONE,
South St. Paul, Minn.,
On the Brief.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 7

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT (DEFENDANT).

BRIEF OF THE RESPONDENT, GEORGE BLASIUS.

D. L. GRANNIS,
Attorney for Respondent (Defendant),
F. J. Schult Building,
South St. Paul, Minnesota.

VANCE B. GRANNIS,
F. J. Schult Building,
South St. Paul, Minnesota,
On the Brief.

INDEX.

Subject Index.

	Page
I. Statement of case	1
II. Argument	2
Summary of argument	2
A. A State has no power to tax property which is in transit among the States or which is the subject of commerce among the States	3
B. The interstate journey of the cattle involved in the case before us was not sufficiently interrupted at the South St. Paul stockyards to subject them to local taxation	3
C. If the cattle were in interstate commerce the tax was a burden on such commerce	14
III. Conclusion	14

Table of Cases Cited.

American Steel & Wire Company vs. Speed (1904), 192 U. S. 500, 24 S. Ct. 365, 48 L. Ed. 538 4

Bacon vs. Illinois (1913), 227 U. S. 504, 33 S. Ct. 299, 57 L. Ed. 615 .. 4, 11

Binderup vs. Pathe Exchange (1923), 263 U. S. 291, 44 S. C. R. 96, 68 L. Ed. 308 5

Carson Petroleum Company vs. Vial (1929), 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292 ..... 3, 4, 6, 10, 13, 14

Champlain Realty Company vs. Brattleboro (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195 ..... 3, 4, 7

East Ohio Gas Company vs. Tax Commission (1931), 75 L. Ed. 1171-75, 283 U. S. 465, 51 S. Ct. 499 12

Eureka Pipe Line Company vs. Hallahan (1921), 257 U. S. 265, 66 L. Ed. 227, 42 S. Ct. 101 ..... 3, 5, 6, 12

General Oil Company vs. Crain (1908), 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754 ..... 4, 13

Hughes Bros. Timber Company vs. Minnesota (1926), 272 U. S. 469, 71 L. Ed. 359, 47 S. Ct. 170 ..... 3, 4, 5, 8, 14

Kelley vs. Rhoads (1903), 188 U. S. 1, 47 L. Ed. 359, 23 S. Ct. 259 .... 4, 7

Missouri Pacific R. Co. vs. Schnipper, D. C., E. D. Ill. (1931), 51 F. (2d) 749 4

Myers vs. Baltimore County (1896), 83 Md. 385, 35 Atl. 144 4

Nashville, C. & St. L. R. Co. vs. Wallace (1933), 71 L. Ed. 444-450 .. 14

Railroad Commission vs. Worthington (1912), 225 U. S. 101, 56 L. Ed. 1004, 32 S. C. R. 653 ..... 5, 10

Stafford vs. Wallace (1922), 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397 ..... 5, 7, 9, 11, 12, 13

Page

State vs. Blasius (Minn., 1932), 245 N. W. 612 5
Susquehanna Coal Company vs. South Amboy (1913), 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015 ..... 4, 13
Swift vs. United States (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 388-9, 25 S. Ct. 276 ..... 5, 8, 9, 10, 12
Texas & N. O. R. Company vs. Sabine Tram Company (1913), 227 U. S. 111, 57 L. Ed. 442, 33 S. C. R. 229 ..... 5, 10

TEXTBOOKS, ENCYCLOPEDIAS, AND LAW REVIEWS CITED.

26 R. C. L., "Taxation", Sec. 105 3
Cooley, "Taxation", 4th Ed., Sec. 381, p. 816 3
Powell, "Taxation of Things in Transit" (1920-1921), 7 Va. L. Rev. 167, 245, 429, 497 3
17 Minn. Law Review 826 5

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 7

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT (DEFENDANT).

BRIEF OF THE RESPONDENT, GEORGE BLASIUS.

I.

Statement of Case.

In addition to the statement of the case contained in the brief of the State of Minnesota, the defendant wishes to add the following:

Mr. Blasius, on May 1, 1929, was known as a trader at the stockyards at South St. Paul, Minnesota. He was a dealer in cattle buying and selling on commission and on order (R., p. 5, fol. 9). In the regular course of business the major portion of the cattle which the defendant bought was sold to non-residents of the State of Minnesota, and shipped to points outside the State (R., p. 6, fol. 10).

It is stipulated in this action that the cattle which Mr. Blasius owned on May 1, 1929, were cattle that were shipped from without the State and consigned to the South

St. Paul market for sale, purchased by Mr. Blasius and then sold and immediately shipped to points outside of the State (R., p. 6, fol. 10, p. 7, fol. 13); or they were shipped from points within the State, consigned to the market at South St. Paul, purchased by Mr. Blasius and shipped to points without the State.

The stipulation is clear that the eleven head of cattle in question were sold to non-residents and shipped to points outside of the State of Minnesota (R., p. 7, fol. 13).

It is further stipulated in this action that the yards of the St. Paul Union Stockyards Company, the defendant's place of business, is a place where thousands of head of livestock arrive daily by railroad and truck and are promptly sold and disposed of and moved to give place to other livestock that arrive in said yards from day to day.

II.

ARGUMENT.

Summary of Argument.

Since the facts in this case show that the cattle in question were in interstate commerce either before they reached the stockyards at South St. Paul or after they left said stockyards, or both before and after they were temporarily detained at South St. Paul, the only question to be determined is whether or not the interstate journey of the cattle was sufficiently interrupted by the temporary detention to subject them to local taxation. It is the contention of the defendant that the tax levied on said cattle is invalid and that the judgment of the Supreme Court of the State of Minnesota reversing the judgment of the lower court sustaining the tax should be affirmed for the following reasons:

A. A State has no power to tax property which is in transit among the States or which is the subject of commerce among the States.

B. The interstate journey of the cattle involved in the case before us was not sufficiently interrupted at the South St. Paul Stockyards to subject them to local taxation.

C. If the cattle were in interstate commerce the tax was a burden on such commerce.

A.

A State has no power to tax property which is in transit among the States or which is the subject of commerce among the States.

Property which is in transit in interstate commerce is immune from local taxation. There is, however, some confusion among the decisions as to the precise limit of the State's power in this respect. See:

Eureka Pipe Line Company v. *Hallahan*, 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227.

Carson Petroleum Company v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292.

Champlain Realty Company v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

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B.

The interstate journey of the cattle involved in the case before us was not sufficiently interrupted at the South St. Paul stockyards to subject them to local taxation.

1. In cases involving the power of a State to tax goods which have been interrupted on an interstate journey it has

been held that an interruption of goods for purposes of inspection, weighing, grading, mixing and for storage or redistribution was enough to subject the property to local taxation.

Bacon v. *Illinois* (1913), 227 U. S. 504, 33 S. Ct. 299, 57 L. Ed. 615.

American Steel & Wire Company v. *Speed* (1904), 192 U. S. 500, 24 S. Ct. 365, 48 L. Ed. 538.

Susquehanna Coal Company v. *South Amboy* (1913), 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015.

General Oil Company v. *Crain* (1908), 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754.

See also:

Myers v. *Baltimore County* (1896), 83 Md. 385, 35 Atl. 144.

Missouri Pac. R. Co. v. *Schnipper*, D. C., E. D. Ill. (1931), 51 Fed. (2d) 749.

In other cases involving the same proposition, most of which are more recent than the above, it has been held that where goods are in a constantly recurring and actually flowing stream of interstate commerce an interruption in the midst of such stream for the purpose of facilitating the flow does not subject the goods to local taxation.

Carson Petroleum Company v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292.

Champlain Realty Company v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195.

Kelley v. *Rhoads*, 188 U. S. 1, 47 L. Ed. 359, 23 S. Ct. 259.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

Railroad Commission v. *Worthington,* 225 U. S. 101, 56 L. Ed. 1004, 32 S. C. R. 653.

Texas & N. O. R. Company v. *Sabine Tram Company,* 227 U. S. 111, 57 L. Ed. 442, 33 S. C. R. 229.

Swift v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276.

Stafford v. *Wallace* (1922), 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397.

Eureka Pipe Line Company v. *Hallahan* (1921), 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227.

Binderup v. *Pathe Exchange* (1923), 263 U. S. 291, 44 S. C. R. 96, 68 L. Ed. 308.

State v. *Blasius* (Minn. 1932), 245 N. W. 612.

See also:

17 Minn. L. Rev. 826.

In some of the above cases it was indicated that the test as to whether or not the goods were in transit was whether or not the interruption was to promote the same or convenient transit or to facilitate the flow of interstate commerce.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

It is the contention of the defendant that the interruption of the cattle in the case at bar was only incidental to the interstate journey and to promote and facilitate the safe and convenient transit. In the modern economic system large central markets for the sale and purchase of livestock for slaughter and feeding purposes are essential. They are essential to the business of the large packing houses as well as to the dealers and traders in the east and middle west who are continually purchasing cattle from the northwest for feeding purposes. The central market at the

South St. Paul Stockyards facilitates and is necessary to the conduct of this business.

Such a market is practically the only place where the producers of livestock can have a ready competitive cash market for their products. When the producer consigns livestock to the South St. Paul Stockyards he does not intend and there can be no intention that the stockyards is to be their final destination. The cattle are sent there for the purpose of finding a buyer to be then either slaughtered or continued on their journey. But in addition to this the very nature of the livestock itself requires that its journey from State to State be interrupted for feed and water, which is a part of the service performed in the stockyards.

The stockyards is operated by a public service corporation which provides yard space for the persons doing business therein, including the defendant. The defendant has no facilities for storing cattle indefinitely. Livestock may be kept on hand for a short period of time but in the regular course of business the great portion of it is disposed of very quickly to give way to the thousands of head arriving from day to day. In short there are no facilities whatever in the South St. Paul Stockyards for the defendant or any one else to permanently keep the livestock which is brought therein.

The detention of the cattle in the stockyards is similar to the interruption of the oil in the pipe lines in the case of *Eureka Pipe Line Company* v. *Hallahan*, 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227, where oil coming from without the State was transported in pipe lines, a portion of which was temporarily stored, and as to all of which the owner of the oil had the power to determine its destination.

It is similar to the interruption of the oil in the case of *Carson Petroleum Company* v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292, where the oil produced for export to

foreign countries was shipped to Point Rose, Louisiana, and temporarily stored there before the journey to the foreign country began, the destination of any particular lot of oil not being determined at the time it arrived at Point Rose.

It is similar to the interruption of the logs in the case of *Champlain Realty Company* v. *Brattleboro* (1922), 260 U. S. 366, 43 S. Ct. 146, 67 L. Ed. 309, 25 A. L. R. 1195, which were detained for a considerable time by a boom to await subsidence of high waters.

It is similar to the interruption of the sheep in the case of *Kelley* v. *Rhoads,* 118 U. S. 1, 47 L. Ed. 359, 23 S. Ct. 259, where the sheep were detained for several days for grazing purposes while being driven across several states.

It has already been pointed out that the business in the stockyards is a specialized economic activity facilitating the flow of interstate commerce; that because of the very nature of livestock it is necessary that the continuity of its journey be interrupted there so it may be sold, watered and fed. Therefore, it is submitted that this is a stonger case than the previous cases cited for a holding that there is continuity of journey, despite the detention at South St. Paul. This Court has definitely indicated that cattle in the stockyards are in interstate commerce and are to be regarded as in transit during their temporary detention in the stockyards.

In the case of *Stafford* v. *Wallace,* 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397, the court said:

> "The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carloads and trainload lots and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the west to the east,

and from one state to another. Such transactions cannot be separated from the movement to which they contribute, and necessarily take on its character. The commission men are essential in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. The dealers are essential to the sales to the stock farmers and feeders. The sales are not, in this aspect, merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with, but, on the contrary, being indispensable to, its continuity. The origin of the livestock is in the west; its ultimate destination, known to, and intended by, all engaged in the business, is in the Middle West and East, either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce."

In the case of *Swift* v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276, the court said:

"* * * Commerce among the states is not a technical legal conception, but a practical one drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit after purchase in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly, recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another state from that of the seller and that of the cattle."

In the case of *Hughes Bros. Timber Company* v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359, the

following language was used in reference to the character of the interruption of the interstate journey of the logs involved in that case:

> "The delays in the continuity of movement were only incidental to the journey and necessary change in the mode of transportation by which the logs were carried from a place in one State to a place agreed upon in another."

It can be seen that the language used in this case involving the power of a State to tax goods in transit is very similar to and contains the same thought as the language used by the Court in the case of *Stafford* v. *Wallace,* 66 L. Ed. 735, 358 U. S. 495, 42 S. Ct. 397, and *Swift* v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276, as applied to cattle in stockyards.

2. It is noted that the cases of *Stafford* v. *Wallace,* 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397, and *Swift* v. *United States* (1905), 49 L. Ed. 518, 525; 196 U. S. 375, 398-9, 25 S. Ct. 276, involve the power of Congress over interstate commerce and not the power of a State over such commerce. And in both of these cases it is suggested that there may be a difference in the extent of power over interstate commerce granted to these two divisions of our Government. These two cases, however, are not directly cited as authority for the proposition that the tax is invalid but to sustain the argument that the cattle are in transit and in interstate commerce while they are in the stockyards at South St. Paul. If there is any difference in the limits of the powers of the State and the powers of Congress over interstate commerce such distinction should not affect the authority of those two cases on the particular point for which they were cited. If the cattle in the stockyards are to be regarded as in interstate commerce for purposes of

Federal regulation, we feel that they must necessarily be in interstate commerce for any other purpose, irrespective of the powers of the State or Federal Government over such commerce. The question then becomes whether or not the particular exercise of the State of Federal power is valid.

Furthermore, in the case of *Carson Petroleum Company* v. *Vial,* 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292, which involved the validity of an *ad valorem* duty on oil imposed by the State of Texas, the decision was based mainly on cases involving the power of the Federal government over interstate commerce such as *Texas & N. O. R. Company* v. *Sabine Tram Company,* 227 U. S. 111, 57 L. Ed. 442, 33 S. C. R. 229, and *Railroad Commission* v. *Worthington,* 225 U. S. 101, 56 L. Ed. 1004, 32 S. C. R. 653.

There is also definite language in both the Swift case and the Stafford case which indicates that the cattle in the stockyards are not sufficiently interrupted to subject them to local taxation. The following quotations from these two cases are admittedly *obiter dictum* and they are cited for whatever authoritative value they may have to show that the cattle in the stockyards are not only in interstate commerce for the purpose of Federal regulation but also to prevent them from being regulated or taxed by a State:

Swift v. *United States* (*supra*), 49 L. Ed. 518-525-6:

> "It should be added that the cattle in the stockyards are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co.* v. *Speed,* 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365. But it may be that the question of taxation does not depend on whether the article taxed may or may not be said to be in the course of commerce between the states, but depends on whether the tax so far affects that commerce as to amount to a regulation of it."

Stafford v. *Wallace* (*supra*), 66 L. Ed. 735-746:

> "Moreover, it will be noted that even in tax cases, where the tax is directed against a commodity in an actual flowing and constant stream out of the state, from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an established course of business. *United Fuel & Gas Co.* v. *Hallhan*, 257 U. S. 277, 66 L. Ed. 234, 42 Sup. Ct. Rep. 105. *Eureka Pipe Line Co. v. Hallahan*, 257 U. S. 265, 66 L. Ed. 227, 42 Sup. Ct. Rep. 101."

3. The case of *Bacon* v. *Illinois* (1913), 227 U. S. 504, 33 S. C. 299, 57 L. Ed. 615, is distinguishable from the case at bar. There the owner of grain which had been shipped from outside the state, removed it to his own private grain elevator where, for his own purpose, he stored it for inspection, weighing, cleaning, clipping, drying, sacking, grading and mixing. The grain was there held to be locally dealt with in the interest of the owner while it was in his custody and was subject to his complete disposition for collateral business purposes of his own. In other words, Bacon withdrew this grain from the flow of interstate commerce for his own private benefit. In the case at bar the defendant did not withdraw any of the cattle involved from their interstate journey. They were shipped to the stockyards and consigned to a commission company. The defendant in the regular course of business bought them for his own profit it is true, but also to facilitate their interstate commerce journey in order that they could be sold and re-shipped to points outside of the stockyards and outside of the State of Minnesota. The fact that title passes in the midst of the interstate journey does not necessarily make the property lose its interstate character.

East Ohio Gas Company v. *Tax Commission*, 75 L. Ed. 1171–75; 283 U. S. 465, 51 S. Ct. 499.

Stafford v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735, 42 S. Ct. 397.

Eureka Pipe Line Company v. *Hallahan*, 257 U. S. 264, 66 L. Ed. 227, 42 S. Ct. 101.

In the American Steel & Wire Company case, 192 U. S. 500, 24 S. Ct. 365, 48 L. Ed. 538, merchandise was shipped from points outside the state to a distributing point in Memphis where they were placed in a warehouse and again sorted and allocated to destinations outside the State of Tennessee. Here again the owner of the merchandise withdrew the goods from their interstate commerce journey for an indefinite period of time and in its own warehouses (leased) and for its own private benefit. As to this case we refer again to the quotation from *Swift* v. *United States*, cited above, page 10.

In the case of *Myers* v. *Baltimore* (1896), 83 Md. 385, 35 Atl. 144, the facts are very similar to the case at bar. Nevertheless, the holding in that case was based on the fact that there was a wrongful assessment of the property (no notice having been given as provided by law), and although the court there did say that the cattle in the stockyards were sufficently interrupted for the purposes of State taxation, we submit that it cannot be used as authority in the instant case for the reasons that it was decided by a State court forty years ago at a time when interstate traffic in livestock had not reached the magnitude that it has today and before either the case of *Swift* v. *United States* (1905), 49 L. Ed. 518, 525, 196 U. S. 375, 398-9, 25 S. Ct. 276, or *Stafford* v. *Wallace*, 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397, had been decided.

In *General Oil Company* v. *Crain* (1908), 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754, the Oil Company maintained an establishment at Memphis, Tennessee, for the distribution of oil which was gathered from outside the State. The oil was stored in tanks from which it was put into smaller containers to be sold locally or in other states or to fill orders already received from customers in Arkansas, Louisiana, and Mississippi. In one tank only the oil which had already been sold on order in Arkansas, Louisiana, and Mississippi, was kept, while the local oil and that which had to be sold was kept in other tanks. The court held that this redistribution of the oil at Memphis subjected it to local taxation. Here again the Oil Company withdrew oil from its interstate commerce journey and stored it in its own tank and for its own purposes in conducting a local redistribution business. There was a very strong dissent in this case and in the case of *Carson Petroleum Company* v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292, the Court said that the Crain case should not be given the force claimed for it by the court below and by counsel for the State, and that since it (the Crain case) was decided "there has been a liberal construction of what is continuity of the journey, in cases where the court finds from the circumstances that export trade has been actually intended and carried through." Furthermore, it should be noted that in the Crain case there was a definite holding that in the situation there presented the oil was not in transit while it was being stored for redistribution at Memphis. In the case at bar, on the other hand, there has been a definite holding by this Court that cattle in the stockyards are in transit. *Stafford* v. *Wallace*, 66 L. Ed. 735, 258 U. S. 495, 42 S. Ct. 397.

The case of *Susquehanna Coal Company* v. *South Amboy* (1913), 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015, followed the Crain case and the same principles apply.

C.

If the cattle were in interstate commerce the tax was a burden on such commerce.

We submit that if the cattle involved in the case at bar are in transit during their temporary detention at the stockyards at South St. Paul, that a direct property tax on them imposed by the State of Minnesota is a burden on interstate commerce. It may be true that indirect taxes imposed upon property which is the subject of interstate commerce may be permitted on the ground that they are not a burden. Nevertheless, where a direct tax is imposed on goods which actually are in transit, it is well settled that such a tax is a burden on interstate commerce.

Hughes Bros. Timber Company v. *Minnesota* (1926), 272 U. S. 469, 47 S. Ct. 170, 71 L. Ed. 359.

Carson Petroleum Company v. *Vial*, 73 L. Ed. 626, 279 U. S. 95, 49 S. Ct. 292.

See also:

Nashville C. & St. L. R. Co. v. *Wallace* (1933), 77 L. Ed. 444-450.

Conclusion.

It is therefore respectfully submitted that the decision of the Minnesota Supreme Court herein be affirmed.

Respectfully submitted,

D. L. GRANNIS,
Attorney for Respondent-(Defendant),
F. J. Schult Building,
South St. Paul, Minnesota.

VANCE B. GRANNIS,
F. J. Schult Building,
South St. Paul, Minnesota,
On the Brief.

SUPREME COURT OF THE UNITED STATES.

No. 7.—October Term, 1933.

The State of Minnesota, Petitioner, vs. George Blasius. } On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[November 6, 1933.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Respondent, George Blasius, is a trader in livestock at the St. Paul Union Stockyards in South St. Paul, Minnesota. On May 1, 1929, he owned and had in his possession in these yards eleven head of cattle which were assessed for taxation as his personal property, under the general tax law of the State. In this action, brought to collect the tax, Blasius defended upon the ground that the cattle were in course of interstate commerce, and a part of that commerce, and were not subject to state taxation. The Supreme Court of the State, overruling the decision of the trial court, sustained this defense and this Court granted certiorari. 187 Minn. 420; 289 U. S. 717.

The material facts, as found by the trial court, are these: At the St. Paul Union Stockyards, thousands of head of livestock arrive daily by railroad and truck and are promptly sold and moved. The livestock comes from the State of Minnesota and other States throughout the northwest. The class of livestock which Blasius buys on the market are those that go immediately thereafter into the hands of feeders or growers within and without the State of Minnesota and principally beyond the borders of that State. He has not dealt in livestock for immediate slaughter. Thus, it was the practice of Blasius to go upon the market at the stockyards and buy livestock to meet the requirements of his trade, and in the regular course of his business practically all cattle purchased by him were sold and shipped to non-residents of the State, although selling and shipping to residents of the State did sometimes occur.

The eleven head of cattle in question came to the yards from some point outside the State of Minnesota; they had been con-

signed to commission firms for sale at the South St. Paul market; the consignors "had no intent to transport said cattle to any other place than South St. Paul, nor did they have any intent that such cattle should be transported to any particular place after their sale"; they were bought by Blasius from the commission merchants on April 30, 1929, and on May 1, 1929, the tax date, they were owned by him and "had not been entered with any carrier for shipment to any point," but were being offered for sale on the market; seven of the eleven head were sold on that day to a non-resident purchaser and were immediately shipped by the purchaser to points outside the State of Minnesota; the remaining four head were similarly sold and shipped on the following day. After his purchase Blasius placed the cattle in pens leased by him from the stockyards company; he paid for their feed and water up to the time of resale.

The court found that Blasius was not "subject to any discrimination in favor of cattle solely the product of the State of Minnesota"; that the assessment was made at the regular time and in the usual manner for taxation of personal property within the State; that the transportation of the cattle ceased after purchase from the commission men; that the cattle were not held by Blasius for the purpose of promoting their safe or convenient transit but were purchased and held by him because he desired to make a profit at their resale; that they were held at his pleasure and that he would sell to anyone, resident or non-resident, who was the highest bidder; that Blasius did not buy the cattle for the purpose of export or shipment to another State; and that after their purchase by him, and until he resold, the cattle were "at absolute and complete rest in the yards at South St. Paul" and "were a part of the general mass of cattle in the State and locally owned". The court also found that the cattle were "handled by the defendant as a part of the chain of title from the original producer thereof to the final consumer thereof", and that such handling was "a necessary factor in the center of chain of commerce from West to the East and South".

The dealings at the South St. Paul stockyards including the transactions of Blasius, as described in these findings, manifestly were so related to a current of commerce among the States as to be subject to the power of regulation vested in the Congress. Applying the cardinal principle that interstate commerce as con-

templated by the Constitution "is not a technical legal conception, but a practical one, drawn from the course of business," this Court said, in *Swift & Company* v. *United States*, 196 U. S. 375, 398, 399: "When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce". In that case, the question was as to the reach of the federal power through the prohibitions of the Anti-Trust Act of July 2, 1890, (26 Stat. 209) and these were held to apply to an attempt to monopolize commerce among the States by "a combination of independent dealers to restrict the competition of their agents when purchasing stock for them in the stockyards". On the same fundamental principle, the Court sustained the Packers and Stockyards Act of 1921 (42 Stat. 159) providing for the supervision by federal authority of the business of commission men and livestock dealers in the great stockyards of the country. *Stafford* v. *Wallace*, 258 U. S. 495.[1] It was in deference to these decisions that the state court denied validity to the tax here assailed. 187 Minn., p. 426.

But because there is a flow of interstate commerce which is subject to the regulating power of the Congress, it does not necessarily follow that, in the absence of a conflict with the exercise of that power, a State may not lay a non-discriminatory tax upon property which, although connected with that flow as a general course of business, has come to rest and has acquired a situs within the State. The distinction was recognized in *Stafford* v. *Wallace*, *supra*, pp. 525, 526, where the Court cited, as an illustration, the case of *Bacon* v. *Illinois*, 227 U. S. 504, in which such a non-discriminatory property tax was sustained. And the Court in the *Stafford* case quoted from the opinion in the *Bacon* case (*supra*, p. 516) the following statement of the distinction: "The question" (that is, as to the validity of the state tax) "it should be ob-

[1]See, also, Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265; United Fuel Gas Co. v. Hallanan, 257 U. S. 277; Dahnke-Walker Milling Co. *v.* Bondurant, 257 U. S. 282; Lemke *v.* Farmers Grain Co., 258 U. S. 50; Hill *v.* Wallace, 259 U. S. 44, 69; Board of Trade *v.* Olsen, 262 U. S. 1, 37, 38, 41.

served, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority.".

The States may not impose direct burdens upon interstate commerce, that is, they may not regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains. This limitation applies to the exertion of the State's taxing power as well as to any other interference by the State with the essential freedom of interstate commerce. Thus, the States cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts, as such, derived from it.[2] Similarly, the States may not tax property in transit in interstate commerce.[3] But, by reason of a break in the transit, the property may come to rest within a State and become subject to the power of the State to impose a non-discriminatory property tax. Such an exertion of state power belongs to that class of cases in which, by virtue of the nature and importance of local concerns, the State may act until Congress, if it has paramount authority over the subject, substitutes its own regulation.[4] The "crucial question", in determining whether the State's taxing power may thus be exerted, is that of "continuity of transit". *Carson Petroleum Co.* v. *Vial*, 279 U. S. 95, 101.

If the interstate movement has not begun, the mere fact that such a movement is contemplated does not withdraw the property from the State's power to tax it. *Coe* v. *Errol*, 116 U. S. 517;

[2]Robbins *v.* Shelby Taxing District, 120 U. S. 489; Fargo *v.* Michigan, 121 U. S. 230; Philadelphia and Southern Mail S. S. Co. *v.* Pennsylvania, 122 U. S. 326; Minnesota Rate Cases, 230 U. S. 352, 400; Pullman Co. *v.* Richardson, 261 U. S. 330, 338; Sprout *v.* South Bend, 277 U. S. 163; New Jersey Telephone Co. *v.* Tax Board, 280 U. S. 338; Anglo-Chilean Corporation *v.* Alabama, 288 U. S. 218.

[3]Coe *v.* Errol, 116 U. S. 517; Kelley *v.* Rhoads, 188 U. S. 1; Minnesota Rate Cases, 230 U. S. 352, 400, 401; Eureka Pipe Line Co. *v.* Hallanan, 257 U. S. 265; United Fuel Gas Co. *v.* Hallanan, 257 U. S. 277; Champlain Co. *v.* Brattleboro, 260 U. S. 366; Hughes Bros. Co. *v.* Minnesota, 272 U. S. 469; Carson Petroleum Co. *v.* Vial, 279 U. S. 95.

[4]Minnesota Rate Cases, 230 U. S. 352, 400, 402, *et seq.*

Diamond Match Co. v. *Ontonagon*, 188 U. S. 82. If the interstate movement has begun, it may be regarded as continuing, so as to maintain the immunity of the property from state taxation, despite temporary interruptions due to the necessities of the journey or for the purpose of safety and convenience in the course of the movement. *Coe* v. *Errol, supra*; *Kelley* v. *Rhoads*, 188 U. S. 1; *Champlain Company* v. *Brattleboro*, 260 U. S. 366. Formalities, such as the forms of billing, and mere changes in the method of transportation do not affect the continuity of the transit. The question is always one of substance, and in each case it is necessary to consider the particular occasion or purpose of the interruption during which the tax is sought to be levied. *Champlain Company* v. *Brattleboro, supra*, p. 377; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *Carson Petroleum Co.* v. *Vial, supra*. The mere power of the owner to divert the shipment already started does not take it out of interstate commerce if it appears "that the journey has already begun in good faith and temporary interruption of the passage is reasonable and in furtherance of the intended transportation". *Hughes Bros. Co.* v. *Minnesota*, 272 U. S. 469, 476.

Where property has come to rest within a State, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the State, or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property within the State and is thus subject to its taxing power. In *Brown* v. *Houston*, 114 U. S. 622, coal mined in Pennsylvania and sent by water to New Orleans to be sold there in the open market, was held to have "come to its place of rest, for final disposal or use," and to be "a commodity in the market of New Orleans," and thus to be subject to taxation under the general laws of the State; although the property might, after arrival, be sold from the vessel on which the transportation was made for the purpose of shipment to a foreign port. As the Court said in *Champlain Company* v. *Brattleboro, supra*, p. 376, the coal in *Brown* v. *Houston* "was being held for sale to anyone who might wish to buy". A similar case is *Pittsburgh & Southern Coal Co.* v. *Bates*, 156 U. S. 577. In *General Oil Company* v. *Crain*, 209 U. S. 211, the company conducted an oil business at Memphis

where it gathered oil from the North and maintained an establishment for its distribution. Part of the oil was deposited in a tank, appropriately marked for distribution in smaller vessels in order to fill orders for oil already sold in Akransas, Louisiana and Mississippi. The Court held that the first shipment had ended, that the storage of the oil at Memphis for division and distribution to various points was "for the business purposes and profit of the company;" and that the tank at Memphis had thus become a depot in its oil business for preparing the oil for another interstate journey. This decision followed the principle announced in *American Steel and Wire Co.* v. *Speed*, 192 U. S. 500. See *Champlain Company* v. *Brattleboro, supra*, p. 375; *Atlantic Coast Line R. R.* v. *Standard Oil Co.*, 275 U. S. 257, 270; *Carson Petroleum Co.* v. *Vial, supra*, pp. 104, 105.

In *Bacon* v. *Illinois, supra*, Bacon, the owner of the grain and the taxpayer, had bought it in the South and had secured the right from the railroads transporting it to remove it to his private grain elevator for the purpose of inspecting, weighing, grading, mixing, etc. He had power to change its ownership, consignee or destination, or to restore the grain, after the processes above mentioned, to the carrier to be delivered at destination in another State according to his original intention. The Court held that, whatever his intention, the grain was at rest within his complete power of disposition, and was taxable; that "it was not being actually transported and it was not held by carriers for transportation"; that the purpose of the withdrawal from the carriers "did not alter the fact that it had ceased to be transported and had been placed in his hands"; that he had "the privilege of continuing the transportation under the shipping contracts, but of this he might avail himself or not as he chose. He might sell the grain in Illinois or forward it as he saw fit". What he had done was to establish a "local facility in Chicago for his own benefit and while, through its employment, the grain was there at rest, there was no reason why it should not be included with his other property within the State in an assessment for taxation which was made in the usual way without discrimination". *Id.*, p. 516. In *Champlain Company* v. *Brattleboro, supra*, p. 375, the court thus restated the point of the *Bacon* case: "His storing of the grain was not to facilitate interstate shipment of the grain, or

save it from the danger of the journey". "He made his warehouse a depot for its preparation for further shipment and sale. He had thus suspended the interstate commerce journey and brought the grain within the taxable jurisdiction of the State". See, also, *Susquehanna Coal Co.* v. *South Amboy*, 228 U. S. 665, 669, and *Nashville, Chattanooga & St. Louis R. Co.* v. *Wallace*, 288 U. S. 249, 266.

The case of Blasius is a stronger one for the State tax than that of *Bacon*. Here the original shipment was not suspended; it was ended. That shipment was to the South St. Paul stockyards for sale on that market. That transportation had ceased, and the cattle were sold on that market to Blasius, who became absolute owner and was free to deal with them as he liked. He could sell the cattle within the State or for shipment outside the State. He placed them in pens and cared for them awaiting such disposition as he might see fit to make for his own profit. The tax was assessed on the regular tax day while Blasius thus owned and possessed them. The cattle were not held by him for the purpose of promoting their safe or convenient transit. They were not in transit. Their situs was in Minnesota where they had come to rest. There was no federal right to immunity from the tax.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.